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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re M.O., a Person Coming Under the
Juvenile Court Law.

E.R.,

Petitioner and Appellant,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

Respondent,

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY et al.,

Real Parties in Interest.

A142649

(Alameda County
Super. Ct. No. SJ12020166)

C.O.,

Petitioner and Appellant,

v.

THE SUPERIOR COURT OF ALAMEDA
COUNTY,

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ALAMEDA COUNTY SOCIAL
SERVICES AGENCY et al.,

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I.

INTRODUCTION

C.O. (mother) and E.R. (father)¹ seek extraordinary writ relief from an order terminating reunification services and setting a Welfare and Institutions Code section 366.26² hearing for their one-year-old son, M.O. (the minor), for November 6, 2014. Although mother and father (collectively the parents) have filed separate writ petitions, their issues are identical. The parents contend there is insufficient evidence to support the juvenile court's finding that returning the minor to their custody would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being. They also challenge the sufficiency of the evidence to support the court's conclusion that they were offered or received reasonable reunification services. Lastly, both parents contend the juvenile court abused its discretion when it failed to extend reunification services beyond the 12-month review hearing, which took place 18 months after the minor was removed from their custody. Having reviewed each of the petitions on their merits, we deny the requested relief.

II.

FACTS AND PROCEDURAL HISTORY

The minor was born in December 2012, and was detained shortly after his birth because mother seemed incapable of caring for the minor without supervision. She was observed to be holding the baby while looking away with a disassociated stare toward the wall. Mother had a diagnosis of paranoid schizophrenia and bipolar disorder, and had a history of substance abuse and psychiatric hospitalizations. She was not taking her medications as prescribed. She had previously failed to reunify with two other children.

Father reportedly met mother when she was homeless. He took her in and had been taking care of her. He reported no one has ever really cared for mother except him.

¹ E.R.'s designation as "father" is based on a signed declaration of paternity, which formed the basis of the court's finding that he is the minor's presumed father.

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

He added that she is his world and he would always take care of her. Father also has failed to reunify with two other children.

Because of mother's inability to function as a parent, as well as father's denial of mother's mental health issues and his overly protective nature toward her, a full psychological assessment was conducted of both parents in anticipation of the jurisdictional/dispositional hearing.

In the psychological report, the evaluator described mother as "present[ing] with a history of incomprehensible speech, delusional content and decompensation following the birth of her son. . . . Behavior observations of the evaluator indicate compromised personal hygiene, difficulty in shifting attention from tasks, extended time for processing of information, thought disorder, inappropriate and flat affect, impaired judgment and absent insight." The evaluator believed "[t]he psychotic symptoms are unlikely to remit and may resurface during times of stress or with noncompliance with prescribed medications." When mother was observed with the minor, the evaluator noted several concerns. She appeared disengaged from the child, had a lack of affect, and seemed unable to respond appropriately to the child's nonverbal behaviors. The evaluator's conclusion painted a bleak picture. She stated, "[i]n view of all the factors that severely compromise [mother's] ability to parent [the minor], it is strongly recommended that the case plan include placement outside the home either in long-term foster placement or in an adoptive home.

In providing an overall evaluation of father's ability to parent the minor, the evaluator noted father had serious cognitive limitations of his own that made it difficult for him to comply with recommended interventions, or to follow through with care at home. The results of father's tests showed that he had an IQ of 79, i.e., in the low-average or borderline category; and he was receiving Social Security disability benefits. He reported he had fathered 10 children from six different mothers, who he described as "welfare, food stamp mothers." He indicated all of his children received Social Security benefits "because all they need is my last name." The evaluator believed an out-of-home placement for the minor "appears prudent and necessary," citing several factors that

“limit [father’s] ability to parent his child” including, “cognitive limitations in problem solving, rigid and concrete thinking, stereotypical responses[,] and an inadequate coping repertoire.”

On April 4, 2013, the minor was declared a dependent of the court based on sustained allegations under section 300, subdivision (b) that the minor was at substantial risk of serious physical harm or illness due to mother’s inability to provide regular care due to mental illness. The court also found father minimized mother’s psychiatric condition, hindering his ability to properly gauge the minor’s safety in the home with mother. A guardian ad litem was appointed for mother.

The court continued the minor’s placement out of the custody of both parents and ordered the Alameda County Social Services Agency (the Agency) to provide them reunification services. The mother was ordered to complete individual counseling, a parenting course, and a substance abuse program with random drug testing, and to remain compliant with any prescribed medication. The father was ordered to complete a parenting course and individual counseling. They were also granted twice-weekly supervised visitation with the minor.

The six-month dependency status review hearing was held on September 25, 2013. By this time, the parents were beginning to acknowledge the issues that led to the minor’s dependency. Mother admitted to her past drug use, she indicated she was “a mental case,” and she reported that father would be her caretaker at all times. Father indicated mother had mental health issues that he was not aware of until the minor was born. Both parents were engaging in the services required by their case plans and were consistently attending supervised visitation with the minor. The Agency reported that the parents’ compliance with their case plan objectives and responsibilities was “in progress.”

At the conclusion of the six-month hearing, the court continued the minor’s out-of-home placement and ordered continued reunification services for the parents. Supervised visitation twice per week was maintained. The court found the parents had made partial progress toward alleviating or mitigating the causes necessitating the minor’s placement.

The Agency prepared and submitted a status review report for the 12-month permanency review hearing, recommending that reunification services for the parents be terminated, and that a section 366.26 hearing be set. By this time, mother was consistently taking her medication, supervised/observed visitation with the minor was going well, and the parents had obtained suitable housing. Nevertheless, the social worker expressed concern that after receiving services for over a year, all of the service providers still believed mother should not be left alone with the minor, and she was totally dependent on father's presence to attend to the most basic parenting duties, such as diapering and feeding the minor and putting him to sleep.

Both parents testified at the contested 12-month hearing which began on June 30, 2014. The father testified that mother had not demonstrated any recent behaviors that concern him, as far as having the minor returned to their care. He believed it was appropriate for the minor to be returned to his parents because "they have a nice, warm home and inside that home both his parents are stable," just as long as mother takes her medication. The father testified he can take care of his son with no one around, and that he plans to watch his son 24 hours a day to alleviate any safety concerns.

Mother also testified. She believed there was nothing pertaining to her current mental health that would place the minor at risk of harm if he were returned to her care. She testified she doesn't hear voices anymore, she has a clear mind, and she does not abuse her pills. She acknowledged that if she were not on her medication, she would be wandering the streets looking to get high. She indicated she's "pretty sedated" and does not leave the house unless she has to go to doctors' appointments. She described her medical conditions as including high blood pressure, cholesterol, diabetes, ulcers, inflamed stomach, muscle spasms, asthma, and sleep apnea. She also testified she has "a smoking problem, a cigarette problem." Father, who she described as "my caregiver, my provider," is with her 24 hours a day.

At the conclusion of the lengthy contested 12-month dependency status review hearing, which ended 18 months after the minor was removed from his parents' custody, the court found that return of the minor to the parents would create a substantial risk of

detriment to the minor's safety. The court summarized its finding of detriment as follows: "The Court's concern at this point is the mother's ability to take care of this child if she's left alone with this child. And that's my concern. [¶] And I don't believe at this point that the father can be there 24 hours a day. And even though he has said in his testimony that he would . . . be there 24 hours a day, I think that's unrealistic."

The court also found that reasonable services had been provided to the parents, and although father "has complied with and completed his case plan," mother had not. The court noted "ongoing therapy is an absolute necessity in this case." With father's implicit if not explicit acquiescence, mother "has failed to participate and continue in that ongoing therapy." The court terminated the parents' reunification services and scheduled a section 366.26 selection and implementation hearing for November 6, 2014.

The parents have filed separate petitions for review of the court's orders, and they each request a stay of the section 366.26 hearing. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) They ask this court to vacate the order setting a section 366.26 hearing and to order the juvenile court to return the minor to their custody. In each case, this court issued an order to show cause and the Agency responded. The parties have waived oral argument.

III. DISCUSSION

A. Substantial Risk of Detriment

The parents each challenge the sufficiency of the evidence supporting the juvenile court's finding that the minor's return to their care would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being.³

“The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals. If there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court's order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence. [Citation.]” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

In this case, there is no doubt the parents had succeeded in fulfilling many of the requirements of their case plans, which were designed to assist them in having the minor returned to their care. They had each completed parenting classes, their drug tests were consistently negative for drug use, they were regularly visiting with the minor and visits were going well, and they had obtained suitable housing. However, a significant requirement in each of their respective case plans required both parents to participate in individual therapy. Although they had each engaged in individual counseling during

³ Pursuant to section 366.22, subdivision (a), “. . . the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian. 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. The social worker shall have the burden of establishing that detriment. . . .”

various points in time during the reunification period, by the time of the contested 12-month hearing neither parent was seeing a therapist.

The record reveals father was not at fault for the cessation of individual therapy. He was consistently participating in such therapy up until March 27, 2014, when his therapist took maternity leave. He only received a referral for a new therapist on June 20, 2014, shortly before the 12-month review hearing commenced.

On the other hand, the record shows mother voluntarily terminated individual therapy. During her testimony, mother acknowledged she stopped participating in individual therapy in February 2014, approximately four months earlier.⁴ She believed the therapist “was trying to brainwash me, basically.” Mother claimed the therapist “kept saying that she . . . thought that I had demons in my house.” The therapist also objected to father standing outside during their sessions. Father told the social worker he was happy mother was no longer attending therapy because he believed that the therapist was trying to break up the parents’ relationship. Standing alone, this failure to complete and participate in a major component of her case plan constitutes prima facie evidence that return of the minor to mother would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being. (§ 366.22, subd. (a).)

However, assuming for the sake of argument that both mother and father participated fully in their services plans, this does not mean that it would be safe to return the minor to their custody. It simply means there is no prima facie evidence of detriment. The juvenile court cannot return a child to parental custody unless it is safe to do so, no matter how compliant the parent has been in fulfilling the requirements of their reunification plan. (See *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141–1142.) Ultimately, “the decision whether to return the child to parental custody depends on the effect that action would

⁴ In its findings at the conclusion of the last hearing, the court found mother “stopped this critical aspect of her case plan and has not been in therapy for the past *seven* months.” (Italics added.) After mother terminated individual therapy, the therapist submitted a report expressing “serious concerns about [mother’s] capacity to physically and emotionally care for her son at this time.”

have on the physical or emotional well-being of the child. [Citation.]” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.)

In terminating reunification services and setting the section 366.26 hearing the court indicated it was “convinced that this child cannot be returned home and it would not be safe to do so.” Substantial evidence supports the juvenile court’s finding. The record shows that throughout the minor’s 18-month dependency, the Agency continually assessed the parents’ ability to safely parent the minor. Despite the successful completion of many requirements of their service plan, they never progressed beyond having their visits with the minor “observed” instead of “supervised.” As stated above, mother has a significant history of mental health issues, and while her condition had stabilized because she was taking her medications as prescribed, her psychiatric condition still rendered her unable to independently provide the minor with routine care and her interaction with him would have to be supervised at all times.

Father contends that his safety plan would have protected minor. He was committed to being present 24 hours a day and attending to all of the minor’s needs, such as diapering him, preparing his food, and putting him to bed. If father needed additional help, he could call on the minor’s “future” godparents, or he could take the minor to a nearby daycare which would be instructed to release the minor only to him. However, the juvenile court found the plan was flawed, finding it was “unreasonable” to believe father would be able to prevent mother from having *any* unsupervised contact with the minor.

Emphasizing “the primary concerns in the case centered on Mother’s mental health,” father claims he should have been presented with the option of living separately from mother and having the minor returned only to him. He points out that he answered “yes” when he was asked whether he was prepared to care for the minor whether or not he lived with mother.

However, there is little in this record that would lead the court to believe father was willing or able to assume the role of a single parent or that he would be capable of restricting mother’s access to the minor. Throughout the minor’s dependency, mother

has failed to establish any degree of independence so that she was less reliant on father, and father seems to have fostered mother's dependence on him. The joint alliance of these parents throughout these proceedings has been clearly evident, even though it was obvious mother's mental health issues were compromising father's ability to reunify with the minor. In short, based on the totality of the evidence, the juvenile court was justified in rejecting the assertion that father was suddenly prepared to separate from mother, prohibit her from having unsupervised contact with the minor, and adequately care for the minor on his own.

We also reject mother's contention that in making its detriment finding, the juvenile court was improperly focused on the past and did not consider her "current" situation, which had stabilized due to mother being compliant with her medication regimen. First, when deciding whether a child presently needs the juvenile court's protection, a parent's past conduct may properly be considered. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169.) Past conduct may be probative of current conditions if there is reason to believe that conduct will continue. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824; see also *In re S.O.* (2002) 103 Cal.App.4th 453, 461.) Thus, the juvenile court appropriately considered present circumstances in light of mother's history.

Relying on *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, the parents each argue the court refused to return the minor simply because they were "less than ideal" parents. (*Id.* at p. 789.) There, the court reversed an order terminating services because the father had done everything the social services agency had asked of him and had even requested anger management services on his own. (*Id.* at p. 772.) The court determined a risk to the child was not shown simply because the father lived with a brother-in-law with a troubled history, and where the agency had not warned him of its concern. (*Id.* at pp. 772-774, 793.)

Here, the situation is different. The minor is very young and entirely dependent on others for his care. Mother has a serious mental illness that renders her unable to provide the minor with any safe level of parenting or supervision. Despite receiving 18 months of

reunification services, there was no discernible improvement in her parenting abilities. Father has shown evasiveness in his reporting and seeking help for mother's behavior, and he has demonstrated a lack of understanding concerning the severity of mother's mental health needs. Under these circumstances, the trial court believed it was unrealistic to expect father would be able to prevent the minor from having any unsupervised contact with mother. For these reasons, we find substantial evidence supports the juvenile court's finding that the minor was at substantial risk of harm if returned to the parents' care.

B. Reasonable Services

Each parent also claims there was insufficient evidence to support the juvenile court's finding that they were provided reasonable reunification services. (See § 366.21, subd. (f).) Again, we disagree.

The purpose of reunification services is to correct the conditions that led to removal so that the dependent child can be returned home. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.) The social worker must make a good faith effort to provide reasonable services responding to the unique needs of each family "in spite of the difficulties of doing so or the prospects of success. [Citation.]" (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777 (*Dino E.*)). In evaluating the reasonableness of services, "[t]he 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.) A juvenile court's finding regarding reasonable services is subject to review for substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010 (*Mark N.*)).

In this case mother faults the Bureau for failing to provide all the services recommended in mother's psychological evaluation. For example, mother points out that the psychological evaluation recommended case management with a multi-specialty clinic to ensure treatment coordination, in-patient drug rehabilitation, a cognitive rehabilitation program to mitigate the negative symptoms of chronic psychiatric illness and substance dependence, and vocational and financial counseling to promote

independent living. Mother further contends the Agency failed to provide her with services related to domestic violence.⁵

Father complains the Agency did not provide him with a referral to a peer support group or educational classes related to mental illness to assist him in understanding of mother's mental health issues and limitations.

We first note that the parents waited until closing arguments of the final hearing to challenge the adequacy of their reunification plan. By failing to challenge the reunification plan by direct appeal, they cannot now claim that the plan was inadequate or unreasonable. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.) A parent may not "wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing. [Citation.]" (*Los Angeles County Dept. of Children etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093.)

Furthermore, as we have already emphasized, the Agency was required to provide reasonable, not perfect services. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972.) Although the parents may have derived some benefit from the specialized services they complain were not provided, the lack of such services does not render the services that were offered inadequate. The record demonstrates the parents received a panoply of services that were specifically tailored to address the problems which led to the minor's removal. In particular, the plan included psychological evaluations, individual counseling, parenting classes, substance abuse treatment, and liberal visitation. While the parents had been the recipients of services for 18 months, and had made significant improvement in some respects, the main problem necessitating the minor's removal remained unresolved. Mother still remained incapable of safely parenting the minor and she still needed constant supervision when she was around him. Moreover, father could not be expected to single-handedly provide full-time appropriate care for the minor as

⁵ Father denied there was any domestic violence between him and mother. Nevertheless, mother and her counselor completed a safety plan in the event of a violent or abusive relationship.

well as helping mother manage her own challenges. In this case, the record establishes that the services offered the parents were reasonable, but that they failed to make progress in ameliorating the conditions that led to the filing of the dependency petition.

With respect to visitation, the parents complain that the Bureau failed “to advance visits beyond the ‘observed’ stage.” They complain they “[were] never allowed once an unsupervised or overnight visitation opportunity.” However, they acquiesced to the visitation as ordered and never claimed the Agency was unreasonable in arranging visitation as it did. At no time, did either mother or father file a section 388 petition asking the court to modify visitation or directly appeal any of the juvenile court’s visitation orders. Consequently, they have waived the right to challenge the court’s orders for visitation. (See *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811-812.)

C. Extension of Reunification Services

At the time of the June 30, 2014 hearing, the minor had been detained approximately 18 months, as he was taken into protective custody in December 2012, a few days after his birth. (See *In re Brian R.* (1991) 2 Cal.App.4th 904, 913-914 [status review hearing that commenced as 12-month hearing, but concluded 22 months after child was removed from parents’ care properly treated as 18-month hearing].) The parents each contend the juvenile court should have extended services beyond the 18-month date.

California’s juvenile dependency system contemplates a maximum reunification period of 18 months. (§§ 361.5, subd. (a)(2), 366.22, subd. (a).) Section 361.5 provides the reunification services “may be extended up to a maximum time period not to exceed 18 months . . . if it can be shown . . . that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period.” (§ 361.5, subd. (a)(3), 1st par.) As one court put it, “there must be a limitation on the length of time a child has to wait for a parent to become adequate in order to prevent children from spending their lives in the uncertainty of foster care. [Citation.]”

(*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388; see also *In re Marilyn H.* (1993) 5 Cal.4th 295, 308.)

A juvenile court's statutory options at the 18-month review hearing are to either restore custody of the dependent child to the parents, or terminate reunification services and refer the matter for a section 366.26 hearing. (§ 366.22, subd. (a); *Mark N.*, *supra*, 60 Cal.App.4th at p. 1015.) However, in extraordinary cases, the juvenile court has the discretion to extend reunification services beyond the statutory 18-month limit—namely, if (1) no reunification plan was ever developed for the parent; (2) the court finds reasonable services were not offered; or (3) the best interests of the child would be served by a continuance of the 18-month review hearing. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167; see, e.g., *Dino E.*, *supra*, 6 Cal.App.4th at p. 1778; *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1213-1214.)

We acknowledge that the parents have complied with much of their case plans and have regularly visited the minor. We commend them for doing so. Nonetheless, the evidence demonstrates none of the exceptional circumstances justifying an extension of services beyond 18 months apply to them.

We have concluded substantial evidence supports the juvenile court's finding that reasonable services were offered to the parents. We have also found substantial evidence exists supporting the court's finding that returning the minor to his parents' custody would subject him to a substantial risk of harm. There is nothing in this record that would lead us to believe that this situation would be remedied if the parents received an additional 6 months of services. After 18 months of reunification services, the parents had not even reached the point where they could have unmonitored contact with the minor, who has spent his entire life in foster care. Under these circumstances, the juvenile court could reasonably conclude that the type of extraordinary circumstances necessary to support an extension of reunification services beyond the statutory maximum did not exist. Accordingly, the juvenile court acted well within its discretion by not extending services beyond the 18-month date and setting the matter for a section 366.26 hearing.

IV.
DISPOSITION

The petitions are denied. The request for stay of the November 6, 2014 section 366.26 hearing is denied. This opinion is final immediately as to this court. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

RUVOLO, P. J.

We concur:

RIVERA, J.

BOLANOS, J.*

*Judge of the San Francisco City and County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.