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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

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

SOLANO COUNTY DEPARTMENT OF
HEALTH AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

C.S.,

Defendant and Appellant.

A143184

(Solano County
Super. Ct. No. J42475)

C.S., the mother of T.M., appeals from an order declaring T.M. to be a dependent of the juvenile court.¹ She contends that there is insufficient evidence to sustain the court’s jurisdictional and dispositional findings. We dismiss the appeal as improperly taken from an order made at a hearing in which a Welfare and Institutions Code² section 366.26 hearing was set. (§ 366.26, subd. (l)(1).)

I. FACTUAL BACKGROUND

This court has previously set forth the facts which brought T.M. and her siblings, A.M., J.M., A.S., and E.S, to the attention of the Solano County Department of Health and Social Services (the Department). (*C.S. v. Superior Court* (Nov. 14, 2014, A142722)

¹ A.M., the father of T.M., did not appeal the order.

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

[nonpub. opn.] (*C.S. I.*) On June 14, 2013, the court sustained jurisdiction in this case based on findings that parents: (1) failed to protect J.M., who was 13 months old at the time of detention, in that he was found to be malnourished in their home; (2) failed to seek medical attention for J.M. thus placing his siblings at substantial risk of similar harm; and (3) failed to adequately supervise his siblings. (*Id.* at pp. 2, 4.)

In September 2013, the Department reported that J.M.'s MRI showed that he had suffered a subdural hemorrhage on his brain which was caused by abusive head trauma. (*C.S. I, supra*, at p. 5.) The Department also learned that E.S. had reported that A.M., the father of her siblings, had sexually abused her.³ Parents denied the allegations. (*Id.* at p. 5.) Following the Department's investigation, it concluded that the alleged sexual abuse was substantiated. (*Ibid.*)

The six-month review hearing was held on January 24, 2014. The Department reported that parents were actively participating in their case plan and had attended all of their visits. It recommended that reunification services be continued and it amended parents' case plan to include an objective that they would not permit others to sexually abuse their children. (*C.S. I, supra*, at p. 10.) The court extended reunification services for parents. (*Id.* at p. 6.)

Mother gave birth to T.M. in April 2014. (*C.S. I, supra*, at p. 6.) The Department filed a section 300 petition alleging that T.M. was at risk due to parents' failure to meet the needs of T.M.'s siblings. The court detained T.M. and placed her in the home of her paternal aunt where two of T.M.'s siblings were also residing.

The Department's report for the jurisdictional and dispositional hearing noted that it was concerned that parents did not seek medical attention for J.M. regarding his weight loss and failure to eat, and that parents had used inappropriate physical discipline on J.M.'s siblings. The Department opined that T.M. was at risk of harm because it was not clear whether parents had used available services to adequately address the issues that brought their children before the court. It was also concerned about E.S.'s disclosure that

³ E.S.'s alleged father is W.J. (*Id.* at p. 1, fn. 1.)

she was sexually abused by father. The Department recommended that T.M. continue in an out-of-home placement and that reunification services be offered to parents.

The contested twelve-month review hearing was held on July 2, 2014. (*C.S. I, supra*, at p. 7.) The Department's social worker testified that parents were now living in Sacramento County to be closer to the children. (*Ibid.*) Parents had consistently attended therapeutic visitation and participated in individual counseling and parent-child interaction therapy. (*Ibid.*) They, however, denied E.S.'s allegations of sexual abuse, although parents had expressed willingness to follow a safety plan to ensure the children were protected from abuse. (*Ibid.*) The social worker opined that mother had substantially complied with addressing the issues that led to removal of the children. (*Ibid.*) Father had also complied with his plan by completing a parenting class, attending visitation and counseling, and incorporating his learning in interacting with the children. (*Id.* at pp. 7–8.) She opined that there was a substantial probability that the children could be returned to parents. (*Id.* at p. 8.) The court questioned her about whether parents had admitted that J.M. was shaken, that he was not properly fed, and that E.S. was sexually abused. The court was concerned about whether mother would report any abuse out of fear that the children might be taken away. It continued the matter for further briefing and argument. (*Ibid.*)

On August 7, 2014, the court terminated reunification services for parents in the case of T.M.'s siblings. (*C.S. I, supra*, at p. 8.) It found that parents had not addressed the physical abuse to J.M. or E.S.'s sexual abuse in therapy and therefore it could not find that parents had resolved the problems that led to the dependency. (*Ibid.*) As to T.M., the social worker testified that as with the older children, T.M. was at substantial risk, and was more vulnerable than her older siblings. The Department recommended that the court bypass services in T.M.'s case under section 361.5, subdivision (b)(10), because reunification services were terminated as to T.M.'s older siblings. (*C.S. I*, at p. 8.) The court sustained the section 300 petition as to T.M. and bypassed reunification services. (*Ibid.*) It set a section 366.26 hearing for T.M. on the same date as her siblings.

Parents petitioned for extraordinary writ review seeking to set aside the court’s order setting a section 366.26 hearing. (*C.S. I, supra*, at p. 1.) On November 14, 2014, this court granted the parents’ petitions, vacating the juvenile court’s orders of August 7, 2014 terminating parents’ reunification services and bypassing reunification services as to T.M. (*Id.* at p. 12.) We opined that parents had not received reasonable reunification services because they were led to believe that they had completed the requirements for reunification and were never informed that they were required to address and acknowledge J.M.’s head trauma and E.S.’s sexual abuse in therapy before the 12-month review hearing. (*Ibid.*) We also ordered the court to vacate the setting of the section 366.26 hearing and to issue new orders extending reunification services for parents. (*Id.* at pp. 12–13.) Mother now appeals the court’s August 7, 2014 jurisdiction and disposition orders as to T.M.

II. DISCUSSION

The Department argues that mother has waived her right to challenge the sufficiency of the evidence to support the court’s jurisdictional and dispositional findings. We agree.

Section 366.26, subdivision (*l*)(1), provides that “[a]n order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following apply: [¶] (A) A petition for extraordinary writ review was filed in a timely manner[;] [¶] (B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record[; and] [¶] (C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.” Section 366.26, subdivision (*l*)(1), thus bars direct appeals from contemporaneous orders made with the order setting a section 366.26 hearing unless the issues were raised in a writ petition and the provisions of section 366.26, subdivision (*l*), have been met. (*In re Tabitha W.* (2006) 143 Cal.App.4th 811, 815–816.) In *In re Anthony B.* (1999) 72 Cal.App.4th 1017, 1023, the court explained that the bar extends to “all orders issued at a hearing at which a setting order is entered. The goals of expedition and finality would be compromised if the validity of these types of contemporaneous,

collateral orders were permitted to be raised by appeal from the order itself or from a later permanent planning order and therefore allowed to remain undecided until well after the permanent plan was decided upon. The desired expedition and finality obviously would be most threatened when the permanent plan was adoption and termination of parental rights, the preferred plan which *must* be ordered if the child is found to be adoptable and the juvenile court cannot make any of the findings set out in section 366.26, subdivision (c)(1)(A) through (D).”

Here, mother did not challenge the court’s jurisdictional and dispositional orders in her writ petition as required by section 366.26, subdivision (l). Those orders were made contemporaneous with the order bypassing reunification services and were subsumed within the order referring the matter to a section 366.26 hearing. (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 447–448.) Mother was required to raise any challenge to the orders in the writ proceeding to preserve the issues on appeal. (*Ibid.*) We must therefore dismiss the appeal. “[The Legislature’s] clear expression . . . leads us to conclude that when services are denied . . . at the dispositional hearing, all challenges to the dispositional judgment and underlying jurisdictional findings must be brought by writ” (*Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 156.)

III. DISPOSITION

The appeal is dismissed.

Rivera, J.

We concur:

Reardon, Acting P.J.

Streeter, J.