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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re J.M. et al., Persons Coming Under the
Juvenile Court Law.

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU,

Plaintiff and Respondent,

v.

A.P.,

Defendant and Appellant.

A143918

(Contra Costa County
Super. Ct. Nos. J1300480, J1300481)

A.P. is the mother of the twins J.M. and A.M., who have been declared dependents of the juvenile court. She appeals from an order terminating reunification services and placing the twins in long-term foster care following a combined six-month/twelve-month review hearing under Welfare and Institutions Code section 366.21, subdivisions (e), (f) and (g)(5).¹ Mother contends that order must be reversed because respondent, the Contra Costa County Children and Family Services Bureau (CFS), did not provide her with reasonable reunification services. We affirm.

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

I. FACTS AND PROCEDURAL HISTORY

A. *Background*

J.M and his twin sister A.M. were born to mother in 2006. In addition to the twins, mother has five living children from a previous marriage who reside in another state with their father and who visit mother about twice a year. The oldest child from that marriage died in 1996 at the age of eight from streptococcus.

In 2007, a dependency case was opened on the twins in San Diego County, where the family was then residing, due to an incident of domestic violence in which the twins' father injured J.M.'s head by pushing mother while she was holding him. The social workers at that time noted concerns about mother's rigid thinking and her apparent difficulty in understanding verbal communications. Nonetheless, she was able to complete her reunification plan and was granted sole legal and physical custody of the twins when the case was dismissed in 2008 so she could move to her parents' home in El Sobrante.

J.M. was diagnosed with bone cancer in May 2012 and was treated at a Kaiser Permanente hospital where the family had health insurance through Medi-Cal. His arm was partially amputated in September 2012. Mother's own mother, to whom she was very close and who had been helping her care for the twins, died unexpectedly at about the same time.

Mother's behavior following the death of her own mother began to cause concern among the Kaiser hospital staff who were treating J.M. When an MRI² scan was needed at the end of the treatment to assess whether J.M.'s cancer had returned, mother fixated on the idea that the magnets in the device would misalign his spine. She negotiated constantly about J.M.'s required treatment, refused to accept the medicine necessary for in-home injections because she believed her refrigerator was not safe, threw an ice pack at a nurse, and delayed J.M.'s treatments and hospitalizations over Halloween, Christmas and the Super Bowl. Mother constantly opposed and objected to hospital policies and

² Magnetic resonance imaging.

procedures and was paranoid, mistrustful and unwilling to share information. She insisted that A.M. sleep in J.M.'s bed at the hospital, which interfered with the staff's access to him. Mother built up the twins' excitement over J.M.'s possible application to the Make-A-Wish program, then declined to sign the paperwork. She refused financial assistance and removed an ear patch to treat J.M.'s nausea from the chemotherapy, citing certain side effects. According to hospital staff, mother was "consistently a fraction of an inch away" from a report to social services. The hospital staff's concerns about mother's behavior came to a head in April 2013, when J.M.'s treating physician diagnosed him with the life-threatening condition of congestive heart failure and, against medical advice, mother drove him 51 miles to get a second opinion at the University of California, Davis rather than immediately admitting him for treatment.

B. Dependency Petition and Jurisdictional Finding

On April 23, 2013, CFS filed dependency petitions on behalf of J.M. and A.M. On June 3, 2013, mother submitted to amended versions of the petitions alleging that J.M. was a person described by section 300, subdivision (b) and A.M. was a person described under subdivision (j), based on the incident in which mother had taken J.M. away from a Kaiser hospital for a second opinion after he was diagnosed with congestive heart failure. The twins were placed in foster care and mother was provided with supervised visitation.

C. Initial Referrals and Mother's Behavior

The disposition hearing was initially set for June 24, 2013, but was continued until November 4, 2013, to accommodate mother's substitutions of counsel and to obtain a medication assessment and further mental health evaluations to better assess the family's needs.³

³ On June 24, 2013, the time initially set for the contested disposition hearing, the court relieved mother's appointed counsel. New counsel was appointed July 1, 2013, but this second attorney was relieved and a third attorney appointed on August 30, 2013.

CFS gave mother referrals for mental health services in May 2013, which included therapy, a medication assessment and a psychological evaluation. It had also given her a list of low fee/no fee mental health providers, parenting classes and anger management classes. An appointment was scheduled for a medication assessment on June 26, 2013, but mother indicated she had already had a mental health assessment and was unwilling to provide CFS with a release or discuss the findings.

On June 18, 2013, Linda Trombettas, the social worker assigned to the case, prepared a memorandum advising the court that CFS had been unable to gather necessary information from mother because she was “closed and tightly guarded” and could not “attend to anything but her own thoughts or inner dialogue during a conversation.” Trombettas reported that mother was unable to understand why the twins had been removed from her custody despite having been told repeatedly since their removal that it was because of her refusal to listen to and/or understand information about her son’s urgent medical needs and her actions placing him at a high risk of death. Mother made repeated telephone calls to CFS (20 within a 30-minute period on one occasion), refused to respond to questions she did not want to hear, and had shown a pattern of repeating the same questions and statements. She denied being overwhelmed by the deaths of her mother and oldest son or by J.M.’s illness. She called the children at their foster home several times a day at all hours, raising her voice angrily, scaring the children and making threats to the foster mother.

An adult clinical assessment of mother by Contra Costa Health Services was performed on June 26, 2013, at which time mother was diagnosed as having an adjustment disorder with mixed anxiety and depressed mood, psychotic disorder not otherwise specified, as well as bereavement issues. This assessment did not qualify as a full psychological evaluation.

Mother had been seen by therapist Patti Bouche, who advised CFS it was impossible to complete an intake with mother because she fixated on telling a long story and could not focus. Mother was manipulative, demanding that Ms. Bouche provide some type of letter, then declining to identify the recipient or explain what the letter

should say. Mother would call Ms. Bouche and hang up on her then call back the next day as if nothing had happened. Ms. Bouche decided that in light of these behaviors, mother was not a good fit for her practice.

In anticipation of the disposition hearing, Trombettas submitted a report on August 26, 2013, advising the court that due to mother's "undiagnosed mental health issues and/or lack of medication," it was difficult to communicate with her or have any kind of productive discussion. Mother seemed to be paranoid and to suffer from a cognitive delay. She would call CFS repeatedly asking the same question and would show up without an appointment several times a day to drop off stacks of documents she believed to be relevant to her case. CFS had received complaints from hospital staff about mother calling obsessively, and the foster mother notified CFS that mother's telephone calls to the children (on one occasion, seven times in one hour) were out of control. Trombettas had given mother several mental health referrals, but mother had not cooperated or followed through. Mother had agreed to a psychological evaluation but would not sign a release so CFS could obtain access to the report.

D. Disposition Hearing

A contested disposition hearing was finally held November 4, 2013. After hearing testimony from Trombettas and mother, the court removed the twins from mother's custody and approved a reunification plan that required her participation in mental health and medication assessments, compliance with any prescriptions for psychotropic medication, and the completion of a 52-week parenting education program.

E. Psychological Examination

Over several dates in December 2013,⁴ the mother underwent a psychological evaluation by psychological trainee Alison Sanders and Steven Cloutier, Ph.D., which resulted in a primary diagnosis of posttraumatic stress disorder and a secondary diagnosis

⁴ On December 4, 2013, the court granted a *Marsden* motion (*People v. Marsden* (1970) 2 Cal.3d 118), relieved mother's appointed counsel, and appointed substitute counsel (her fourth).

of delusional disorder. Their report characterized mother as a resilient woman whose life had been shaped by traumatic personal loss that has “tested her ability to keep her world together in a clear and cohesive manner.” She was prone to cognitive impairment when she experienced strong emotions, exhibited by tangential and pressured speech and a high degree of guardedness. The evaluators believed mother presents as higher functioning than she actually is, meaning she will appear to understand information when in fact she does not. Mother cared deeply about her children, but was unable at times to think clearly and apply logical reasoning; when she is unable due to stress to accurately perceive reality, she may respond with unsafe actions such as her decision to take her son out of the hospital and seek a second opinion when he was diagnosed with congestive heart failure.

The evaluators recommended that mother participate in therapy with a clinician who had expertise in working with clients experiencing paranoia, that she be given parenting supportive services to ensure there were no gaps in J.M.’s medical care, and that she have an evaluation to determine whether she should receive psychotropic medication targeting her false belief system, depression, and anxiety, which would “likely represent the single greatest thing she could do towards achieving reunification with her children.” It was also recommended that mother have a thorough medical examination to rule out possible complications contributing to her reported hearing problems, anxiety, and errors in thinking.

F. Six-Month/Twelve-Month Status Report

The case was calendared for a combined six-month/twelve-month review hearing on May 30, 2014, which was ultimately continued until July 16, 2014, to accommodate the appointment of a guardian ad litem for mother. (§ 366.21, subds. (e) & (f).) A status report prepared by Trombettas indicated mother’s mental health had declined rapidly since the disposition hearing.

Mother had been making incessant telephone calls to CFS, the visitation supervisor and the mental health clinic, repeating the same questions. She had called the

foster mother repeatedly and, when told she had already spoken to the twins earlier that day, responded that she wasn't sure they were *her* children. Mother told a social worker her children's faces were changing and asked, "Aren't children not allowed to get plastic surgery while in foster care?" She made remarks about the twins having had plastic surgery about three times. The foster mother was overwhelmed with trying to calm and comfort the twins after the mother told them during a telephone call that they were never coming home and she would bring their things to the next visit. Mother had shown a social worker a studio on the back of her father's property with no kitchen, bathroom, or running water and explained it was a possible home for her and the twins when they were returned to her.

CFS suggested that Dr. Kimberly Loda treat mother because she had expertise in areas outlined in the psychological assessment. A medication assessment with Dr. Loda was scheduled for March 17, 2014, and mother began calling the office incessantly to repeat the same questions and inform the staff she didn't know why she had to come in or why her children had been removed from her. Trombettas met mother at the appointment with Dr. Loda so she could make sure there was no misunderstanding regarding payment, the appointment time, the nature of mother's participation or anything else that might impede the assessment. Mother was adamant she did not want a social worker to come to the appointment, and asked to see Trombettas's identification when she arrived. Dr. Loda told Trombettas she thought mother might be schizophrenic, and might be able to benefit from medication to curb some of her problematic behaviors, but this was only a "getting to know you" visit and she would have to schedule a follow-up appointment.

During an appointment on March 24, 2014, Dr. Loda offered mother an anti-psychotic medication and mother became angry. On March 26, 2014, mother left a letter at the reception desk of CFS that could be construed as a suicide letter, in which she described an upsetting meeting with a Dr. Daniel May, a psychiatrist she had been seeing who worked at the same clinic as Dr. Loda. According to mother, Dr. May had jumped back from mother as she leaned in to speak to him and had accused her of trying to grab her case file from him; mother described Dr. May as "crazy" and wanted her case

transferred out of the county. (CFS had not approved Dr. May to treat mother.) Dr. Loda met with mother again on March 27, 2014, and raised the subject of medication, but mother became angry.

Mother had been inappropriate with the children on a number of visits, talking about the case and telling them they would be coming home after a home inspection was completed and asking them whether they had seen their father (who was incarcerated and had not seen the children in years). During a visit on April 21, 2014, mother called 911 after J.M. made a remark about wanting a dad who would pretend to kill people, which mother interpreted to mean that a man in the foster home was hurting J.M. In fact, and as confirmed by the social worker, there was no man living in the home and J.M. assured mother he had just been joking. Mother insisted to the police who arrived to investigate the call that the twins be moved to a new foster home, causing the children to be terrified because they felt safe with their foster mother and did not want to leave her.

Mother went to CFS's offices to speak with Trombettas, who reviewed the concerning behaviors and suggested mother consider the idea of medication in conjunction with therapy. Mother responded that she did not have any mental health issues, that CFS wanted everyone on medication, and that she was going to talk to more family members to apply for relative placements. At the end of April 2014, mother came by the office and told Trombettas she was on her way to fill her prescription, but this proved to be false as she had simply been prescribed ibuprofen for headaches. Asked how ibuprofen would help, mother said she only had posttraumatic stress disorder and no one had recommended medication for her.

Mother had completed two parenting classes.

The status report noted the children were thriving in their foster home and doing well in school, although they were a little behind academically. J.M.'s medical condition was stable and he was using an arm prosthesis. Trombettas recommended that the court terminate reunification services to mother and place the children with a maternal aunt who lived in Arkansas.

G. Six-Month/Twelve-Month Status Review Hearing

The status review hearing commenced on July 16, 2014, and continued on different dates until its conclusion on October 24, 2014. Trombettas was cross-examined extensively about her report and the reunification services offered to mother, but mother did not testify.

After the initial session of the status review hearing, Trombettas contacted Dr. May to verify information that mother had recently been prescribed psychotropic medication under his supervision. Case notes confirmed mother had been prescribed a trial of Zoloft on June 18, 2014, but mother stopped taking it on July 14, 2014, due to reported side effects. Mother was prescribed Celexa on July 30, 2014, but it was unknown whether she had begun taking it. Dr. May's notes stated a diagnosis of psychotic disorder not otherwise specified and indicated mother "suffers from a defect of reality testing and thinking. Her thoughts are recurrent, obsessive, and continually avoidant and deeply steeped in paranoid process."

Prior to the final day of the status review hearing, Trombettas submitted a written update indicating that mother's inappropriate behaviors had prompted CFS to suspend visitation. For example, during a visit on September 25, 2014, mother seemed to hear voices the entire time and kept asking the twins if they heard noises. Mother had disenrolled A.M. from Kaiser because it was the health care facility that brought the family to the attention of CFS, but she had been stopped by CFS from disenrolling J.M.⁵ The Contra Costa County Sheriff's Department notified CFS that on October 6, 2014, mother had come to their El Sobrante office with a case full of paperwork trying to file a restraining order against her social worker. The officer was not clear on what mother was saying and thought she might have mental health issues.

Trombettas also reported that CFS had been contacted by Dr. Belinda Lopes, who said she had been mother's therapist since September 1, 2014. Mother had not provided

⁵ Although mother advised CFS she intended to enroll the children in a different health care plan, CFS was concerned about gaps in coverage and continuity in medical care, particularly in light of J.M.'s medical history and conditions.

Dr. Lopes with any information about the dependency case despite promising to do so. Dr. Lopes had referred mother for medication as mother could not be assisted in her current mental state, and she believed mother needed inpatient treatment and antipsychotic medication rather than an antidepressant, as Dr. May had prescribed. According to Dr. Lopes, mother was in great need of medication if she was going to make any progress, but she had no ability to follow through. On October 19, 2014, Dr. Lopes notified CFS she was discontinuing therapy with mother.

At the conclusion of the status review hearing, the court adopted the recommendation that reunification services be terminated. It found by clear and convincing evidence that returning the children to mother's custody would create a substantial risk of detriment to their safety and that CFS had provided mother with reasonable services designed to alleviate the problems that caused the children's removal. The court ordered a permanent plan of long-term foster care and authorized CFS to provide out-of-state visits to the maternal aunt and to place the children with her upon 72 hours' notice.

DISCUSSION

Mother argues she is entitled to an extension of the reunification period because CFS did not provide her with reasonable reunification services. We disagree.

When a child who is three years of age or older is declared a dependent of the juvenile court and removed from a parent's custody, the family is entitled to 12 months of reunification services, which may be extended to a maximum of 18 months. (§ 361.5, subd. (a)(1)(A); *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 (*Amanda H.*)) At the 12-month review hearing, the social services agency must prove by clear and convincing evidence that it provided reasonable services to the family; if not, services must be extended to the end of the 18-month period and possibly beyond. (§ 366.21, subd. (f); *Amanda H.*, p. 1345; *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1503-1504.) We review a court's finding that reasonable services were offered under the substantial evidence standard. (*Amanda H.*, p. 1346.) “ “ “If there

is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.” ’ ’ (Ibid.)

The agency must make a good faith effort to develop and implement a family reunification plan, and the adequacy of its efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) “[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult” (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Suitable services are required regardless of the difficulties of providing such services or the prospects for success. (*In re John B.* (1984) 159 Cal.App.3d 268, 273.) That said, “we must also recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969-970.)

Here, the mother’s mental health problems were at the root of all the issues in the case. CFS provided mother with a number of referrals for mental health providers and examiners, but mother’s own recalcitrance to provide information, sign releases, and follow up on the recommendations of the mental health providers she did see frustrated this process. CFS could not involuntarily medicate mother, and there did not appear to be any realistic chance mother could reunify without psychotropic medication.

Mother argues that her case is analogous to *In re K.C.* (2012) 212 Cal.App.4th 323 (*K.C.*), in which the appellate court concluded that reasonable reunification services had not been provided at the time of the 12-month review hearing. (*Id.* at pp. 329-331.) The father in *K.C.* had undergone a psychological evaluation that identified certain mental health issues, and the evaluator recommended a further examination to determine the efficacy of psychotropic medication. (*Id.* at p. 329.) The social services agency referred

father to a public mental health clinic, but when that clinic determined that father did not meet their treatment criteria, the agency made no other attempts to help him secure the evaluation. (*Ibid.*) The court concluded that the agency had effectively delegated the burden of seeking treatment to the father, who was ill equipped to find it in light of the mental health issues the treatment was designed to remediate. (*Id.* at p. 330.) Under the circumstances, the failure to arrange a medication evaluation for the father was unreasonable. (*Id.* at p. 334.)

The efforts of CFS in this case are readily distinguishable from the agency's actions in *K.C.*, in which the father, through no fault of his own, did not obtain a critical psychological evaluation that was necessary for future treatment and reunification. Here, after obtaining a psychological evaluation that concluded medication was probably "the single greatest thing" mother could do to reunify, CFS provided the necessary referral for the medication assessment. Trombettas met mother at Dr. Loda's office to see that all went smoothly, but mother did not want her there. When Dr. Loda spoke to mother about taking medication, mother became angry. Mother chose to see Dr. May, who had not been approved as a provider for mother's case by CFS, and later began taking medication while under his care. She quit after experiencing perceived side effects, and the record does not reflect she had followed through with taking an alternative medication he prescribed.

Mother argues her case plan should have been amended to reflect the recommendations in the psychological evaluation: that mother undergo a medical examination to rule out any physical causes of her symptoms, that she participate in individual therapy, that she be provided parenting services, that she participate in a support group, and that an advocate be assigned to the case. We disagree. Trombettas testified that she did not provide a specific referral for a medical examination because mother had medical coverage through Kaiser and did not need such a referral. Two "parenting partners" had already been appointed to advocate on mother's behalf, the second being necessary because mother's behaviors were so difficult, and mother had already completed two parenting programs. New referrals for therapy were deferred so

that mother could stabilize on psychotropic medication, as she had not been successful in working with mental health providers while unmedicated.

Mother also complains that the services were unreasonable because Trombetta did not review the psychological evaluation with her and did not provide it until later in the case. Again we disagree. The evaluators had recommended that mother not receive a copy of the actual report due to concerns about her mental state; consequently, the social worker presented the issue to the court before releasing it to her. But, in the meantime, mother had received a summary of the results from one of the evaluators along with recommendations written in a language designed for a layperson to understand.

Reunification services are voluntary and cannot be forced on an unwilling parent. (*In re Nolan W.* (2009) 45 Cal.4th 1217, 1233.) A social worker is not required to “ ‘take the parent by the hand and escort him or her to and through classes or counseling sessions.’ ” (*Ibid.*) CFS took reasonable steps to guide mother toward appropriate mental health treatment, but mother did not take advantage of what was offered to her. It may well be that mother’s mental health issues contributed to her lack of cooperation, but this did not excuse her from failing to participate in the plan and did not render the services offered unreasonable. (See *Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762-763; *In re Christina L.* (1992) 3 Cal.App.4th 404, 415.)

DISPOSITION

The judgment (order terminating reunification services and establishing permanent plan of long-term foster care) is affirmed.

NEEDHAM, J.

We concur.

JONES, P. J.

BRUINIERS, J.

(A143918)