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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.O.,

Defendant and Appellant.

A145054

(San Mateo County
Super. Ct. No. JV83762)

INTRODUCTION

This dependency proceeding involves M.M., a 13-year-old girl with serious mental health issues who has been involuntarily committed at least five times under the provisions of the Welfare and Institutions Code.¹ Although the court ordered family therapy for her and her mother, J.O., (Mother) at the disposition hearing in August 2014, no family therapy occurred until March 13, 2015. Mother appeals from an order following the six-month review hearing in which the court found reasonable services had been provided. We conclude no substantial evidence supports this finding, and reverse the order.

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

PROCEDURAL AND FACTUAL BACKGROUND

A juvenile dependency petition regarding M.M. was filed in May 2014, alleging failure to protect and serious emotional damage. (Welf. & Inst. Code, § 300, subs. (b)–(c).)² In it, the San Mateo County Human Services Agency (Agency) alleged M.M., then 12 years old, had been hospitalized due to malnourishment and suicidal threats. She had been diagnosed with atypical anorexia nervosa, major depressive disorder, and post traumatic stress disorder. M.M. reported being sexually abused by “three adult males previously permitted to either reside in, or frequent the home,” and being berated by paternal relatives about her weight.

In the Agency’s initial detention report, it indicated the first referral was on May 7, 2014, after M.M. disclosed to Mother that her father’s cousin had molested her. Mother indicated she had confronted one of the men M.M. identified as sexually abusing her, and he had stated he “was just ‘playing’ with [M.M.]” He then left the home, and his whereabouts were unknown. Mother made a police report about the incident. The Agency reported the “parents had no prior knowledge about the molestation, however once they learned about it they sought mental health services for [M.M.]”

The second referral was made three days later, after M.M. was hospitalized for malnutrition and placed on a psychiatric hold because she indicated she would “jump off a bridge if she had to go home.” M.M. also reported being emotionally abused by her paternal aunt and grandmother. Her four siblings were interviewed, and indicated they believed M.M. was sad because she was “insulted,” “put down,” and “made fun of” by the aunt and grandmother “for being overweight, ugly, [and] not worthy of wearing nice clothing.” The siblings reported they, too, were emotionally abused by these two relatives, but “ ‘they can handle it.’ ” The siblings indicated “they have asked their father to ‘tell them to stop being mean, but he doesn’t listen.’ ” Both parents were aware of the emotional abuse, but Mother “could not offer a means to protect her children from it,” while the father indicated he told the children to ignore it because “ ‘it doesn’t mean

² Because M.M.’s father is not a party to this appeal, we set forth only those facts necessary for a determination of the issues on appeal as to Mother.

anything.’ ” M.M. and her sibling reported, and the parents agreed, that M.M. was the “identified child” required to clean the house and care for her younger sister.

In June, the Agency filed an amended petition, and the court ordered M.M. detained. The amended petition was sustained following a continued jurisdiction/disposition hearing on August 19. The court ordered “Level 1 unsupervised visits” with Mother, and “Level 3 supervised visits” and a “clinical assessment for therapeutic/coaching visits” for M.M.’s father. The court also ordered the reunification plan for Mother was “A program of counseling/psychiatric therapy as directed by the social worker with specific treatment to be based upon the assessment completed by an agency approved therapist.”

In the report for the interim review hearing on October 23, 2014, the Agency reported M.M. was currently placed in an “Intensive Therapeutic Family Care home.” The minor reported she was having visits with Mother, and “ ‘it’s all good with me.’ ” She did not want to visit with her father. M.M. was hospitalized on a section 5150 hold in mid-September, after she told her foster mother she wanted to kill herself and “had a plan.” Following her release from the hospital, M.M. told the foster mother, and police after they were summoned, that “she wanted to get a knife and kill the girl that was bothering her at school.” She was admitted to St. Helena Hospital Center for Behavioral Health. Her treating physician at that hospital prescribed her Seroquel, Prozac, and Clonidine.

M.M. was receiving individual therapy from a therapist at Rebekah Children’s Services in Gilroy. The therapist told the social worker she would “make a referral with Rebekah Children’s Services for a Spanish therapist” to conduct dyad therapy with Mother and M.M.

At the October hearing, Mother’s attorney indicated her case plan involved only therapy, and the social worker had informed her the Agency wanted her to have dyad therapy with M.M. Mother, however, was “still waiting for that referral.” It was “taking a while because it needs to be Spanish-speaking and it takes a while for the Agency to find that.” M.M.’s attorney requested that M.M. get the prescription eyeglasses she

required for school immediately, because there had been “back and forth” without any resolution. The court continued its prior orders, and ordered the Agency to purchase M.M. the prescription glasses she required that day and seek reimbursement later.

In the Agency’s report for the six-month hearing, it indicated M.M. had been removed from her foster home at the request of the foster mother after M.M. “punched and choked” her foster sister on January 17, 2015. M.M. was transferred to the Receiving Home in San Mateo. After a few days there, M.M. was involved in an altercation with another girl and “became Absent Without Leave.” When the sheriff found her, she “resisted arrest and became defiant which caused the police to cuff her and take her to . . . Psychiatric Emergency Services . . . at San Mateo Medical Center” under a section 5150 hold. Four days later, M.M. was again transported to Psychiatric Emergency Services under a section 5150 hold because she reported “hearing voices” after the Receiving Home staff found her mouth and nose covered in blood.

M.M. had an Individualized Education Plan based on the “Emotional Disturbance” eligibility criteria. M.M. had been receiving weekly individual therapy from a therapist at Rebekah Children’s Services in Gilroy since July 2014. She was still prescribed Seroquel, Clonidine and Prozac. The Interagency Placement Review Committee recommended that M.M. receive a “higher level of care” at the Canyon Oaks Youth Center in Redwood City based on her mental health needs.

As to Mother’s case plan, the Agency reported “mother and child [M.M.] have not started family therapy. The family was on [the] waiting list to receive family therapy with Rebekah Children’s Services, Gilroy, CA from October 2014 until late December 2014, due to not having a Spanish speaking therapist to work with the family. On January 8, 2015, [M.M.] and mother were going to begin family therapy with the therapist . . . from Rebekah Children’s Services. However, due to [M.M.] starting school that week and . . . feeling overwhelmed the family therapy was cancelled. In addition, on January 15, 2015, due to [M.M.] having . . . difficulties adjusting to attending school, the family’s therapy was cancelled. The family’s therapy was to begin on January 22, 2015, however due to [M.M.’s] placement changing this did not occur. Given that [M.M.] was

placed at Canyon Oaks Youth Center on February 3, 2015, the family is expected to have family therapy with the therapist . . . at Canyon Oaks Youth Center within the next two weeks.” Mother had been regularly visiting M.M. and participated in her Individualized Education Plan process.

The unit supervisor at Canyon Oaks Youth Center addressed the court, indicating the facility had a bilingual therapist, but that therapy had not begun because there was confusion about whether the therapy had to be supervised by the Agency. She had clarified that the therapy with Mother and M.M. did not have to be supervised, so suggested “let’s go ahead and get it started.”

At the February 19 six-month hearing, Mother’s attorney indicated that Mother had been “prepared this entire time and waiting to engage in family therapy which she was told she would have, and she’s still waiting, hasn’t had a single session. And yet it’s reflected on the report that she’s made minimal progress in her case plan. That’s concerning to me because she has a limited amount of time by law to reunify with her daughter. And seven months have passed where she’s prepared to do everything that she needs to do and is doing everything she’s supposed to be doing and yet is being, you know, so to speak penalized for the Agency’s failure to provide the services that are in the case plan.” Mother’s attorney sought a contested hearing on the issue of whether reasonable services were provided to Mother. The court stated “It’s a two-way street to get this going. Granted, the bureaucracy’s hard to break through, especially with the language issue, but that’s part of the mix also. But I think just sitting and waiting for seven months for the phone to ring, if that’s all it was, is not a great response either. However, if you’d like to set a contest we can do that on that single issue.”

At the April 27 continued contested hearing on reasonable services to Mother, the social worker testified that she was assigned to the case in August 2014. She agreed the reunification plan for Mother had two components; visitation and “a course of therapy as determined by the social worker.” The social worker testified “October 16th, 2014 is when I requested the referral for family therapy with [Rebekah] and Children’s Family Services in Gilroy, California.” The social worker indicated the location of the proposed

family therapy was “about 50 miles” from Mother’s home, and acknowledged Mother had a job and four other children at home. Neither Mother nor father had a driver’s license. The social worker had been transporting Mother to visitation with M.M. in Hollister once or twice a week from October 11, 2014 “until she was placed somewhere else.” Although Mother never called the social worker about the family therapy, the social worker testified that during their drives from Redwood City to Hollister, she and Mother would “talk about the family therapy starting and we were both awaiting for her to be assigned a therapist.” Although she was prepared to transport Mother to counseling sessions, the social worker “did state to [Mother] that it would also behoove her to know how to get there herself . . . when transportation was not available for her.”

The family therapy services were not immediately available, and Mother was placed on a waiting list for about two months. The social worker did not refer Mother to an alternative therapy provider. The social worker felt family therapy at Rebekah’s Children’s Services would provide familiarity and continuity for M.M., and felt M.M. “would have some triggers” travelling “back and forth from Redwood City.” Family therapy with Mother and M.M. did not begin until March 13, 2015.

The court stated: “Well, the two components were to be visitation and therapy. Visitation generally has happened. And in fact the social worker and the Department have been active in helping that, it sounds like, particularly during the [minor’s] residency in Santa Clara County. Sounds like they went to a lot of efforts [to] make the visitation component work. [¶] The other—it’s troubling that for a period of six months, almost seven by the time therapy really gets going in March that that didn’t happen. It was set up in due course. Unfortunately it wasn’t set up as fast as we all had liked. It never is. But it was set up. And if it had started on time, it would have been nice. But the reality is in September [M.M.] had health issues on several different dates. By the time it was actually set up in mid[-]December, then in January, [M.M.] had a number of health issues and it just didn’t happen. [¶] I don’t find that one can fault the Department for those delays. I think it was right to focus on [M.M.’s] needs. And it was probably the right call because she’s doing better and mom is seeing her now and that’s going well. . . .

[¶] So I do find the services have been reasonable. That doesn't mean the parents aren't going to get six more months or even more if I deem it necessary later under exception, but I do think the services were reasonable given the limitations imposed on the situation by [M.M.'s] own needs. [¶] I do agree mother's . . . progress has been moderate rather than minimal.”

DISCUSSION

Mother asserts no substantial evidence supports the trial court's finding that the Agency provided reasonable services.

“[W]henver a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians. . . . [¶] Family reunification services, when provided, shall be provided as follows: [¶] [For a child over three years of age]. . . , court-ordered services shall be provided *beginning with the dispositional hearing* and ending 12 months after the date the child entered foster care” (§ 361.5, subd. (a)(1)(A), italics added.) “Family reunification services shall be provided or arranged for by county welfare department staff in order to reunite the child separated from his or her parent because of abuse, neglect, or exploitation. These services shall not exceed 12 months except as provided in subdivision (a) of Section 361.5 and subdivision (c) of Section 366.3. . . . Family reunification services shall be available without regard to income to families whose child has been adjudicated or is in the process of being adjudicated a dependent child of the court under the provisions of Section 300.” (§ 16507.)

At the six-month review hearing, the court “shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child *have been provided or offered* to the parent or legal guardian.” (§ 366.21, subd. (e)(8), italics added.) A finding that reasonable reunification services have been provided must be made upon clear and convincing evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962,

971 (*Alvin R.*.) We review that finding for substantial evidence, bearing in mind that the juvenile court’s determination must be made by clear and convincing evidence. (*Ibid.*)

“Reunification services need not be perfect. [Citation.] But they should be tailored to the specific needs of the particular family. [Citation.] Services will be found reasonable if the Department has ‘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 (such as helping to provide transportation . . .).’ [Citation.]” (*Alvin R., supra*, 108 Cal.App.4th at pp. 972–973.)

“[A] parent or child can be aggrieved by a reasonable services finding at the time of the six-month review hearing if it is not supported by substantial evidence. Such a finding can put the interests of parents and children in reunification at a significant procedural disadvantage. First, reunification services are generally limited to 12 months for a child over the age of three years. (§ 361.5, subd. (a)(1).) At the time of the 12-month review hearing, the juvenile court can only return a child to parental custody if it finds that return would not create a substantial risk of detriment to the physical safety or emotional well-being of the child. (§ 366.21, subd. (f).)” (*In re T.G.* (2010)

188 Cal.App.4th 687, 695.) “[I]t is obvious it would be significantly more difficult for a parent to either reunify with a child or to satisfy the heightened showing required for a continuation of reunification services if the parent was not provided with reasonable services during the first six months of the reunification period.” (*Ibid.*) “[A] parent whose services are terminated at the 12–month review period based in part on an erroneous finding of reasonable services during the first six months of reunification, would be unable to challenge that finding by way of an appeal from a subsequent adverse order at the time of the 12-month review hearing.” (*Id.* at pp. 695–696.)

This case involves a child with exceptionally severe mentally health issues, necessitating both therapy for the child and family therapy for Mother and child. The reunification plan for Mother had only two components: visitation and family therapy with her and M.M. Despite her job, four other children, and M.M.’s out-of-county

placement in Hollister, Mother regularly visited M.M. Mother had no driver's license, and the social worker provided transportation to visit M.M. in Hollister. In the February 2015 report, the social worker reported she supervised visitation between Mother and M.M. since October 11, 2014, and that M.M. and Mother "have been appropriate and mother has been able to demonstrate how to address the child's behavior when the child becomes upset." The social worker further reported Mother "has not completed the objectives of the case plan goals as she has not been able to participate in family therapy with the child . . . due to not have a Spanish speaking therapist to work with the family into late December 2014."

The court acknowledged no family therapy was provided, but found that this failure was not the Agency's fault. The court found "the reality is in September [M.M.] had health issues on several different dates. By the time it was actually set up in mid[-]December, then in January, [M.M.] had a number of health issues and it just didn't happen. [¶] I don't find that one can fault the Department for those delays. I think it was right to focus on [M.M.'s] needs."

The record, however, does not support the court's finding. The only reason provided by the Agency in its six-month report for the failure to provide family therapy to Mother was "not having a Spanish speaking therapist to work with the family into late December 2014." Although the social worker testified she "would not have" been able to set up family therapy while M.M. was hospitalized from September 17 through September 25, there is no evidence she attempted to do so prior to that hospitalization. To the contrary, the social worker testified that, although the dispositional hearing at which therapy was ordered was on August 19, she did not make a referral for Mother to begin family therapy until October 16. During the next two and a half months, no family therapy was offered or provided to Mother because she was on a waiting list with Rebekah Children's Services in Gilroy until a therapist was available. Finally, in late December, an appointment with an available, Spanish-speaking therapist was scheduled for January 8, 2015. Before that therapy could take place, however, the foster mother told the social worker she thought M.M. was too "overwhelmed" due to starting at a new

school, and that therapy with Mother should be postponed. The next family therapy session scheduled for January 15 did not take place because M.M. was “still adjusting” to school.

The next family therapy session, scheduled for January 22, did not take place because M.M. was removed from her foster home at the foster mother’s request after M.M. “punched and choked” her foster sister on January 17, 2015. M.M. was then placed at Canyon Oaks in Redwood City. Despite the availability of a Spanish-speaking therapist at that facility, no family therapy occurred due to confusion about whether the therapy had to be supervised by the Agency. The unit supervisor clarified that the therapy with Mother and M.M. did not have to be supervised, and suggested, at the February 19 hearing, “let’s go ahead and get it started.” Still, family therapy did not commence until almost four weeks later.

It is the Agency’s obligation to provide reunification services, including making efforts to overcome obstacles to provision of reunification services. As the court in *Alvin R.*, explained in a similar situation, “The maternal grandmother’s schedule and her insistence upon a therapist near her home were a major obstacle to any reunification efforts. Nevertheless, the Department’s only effort to overcome this obstacle was apparently to make a referral to a therapist who had no time available to see Alvin. There was no evidence that the Department made an effort to find other therapists in the area, or that the Department attempted to find transportation for Alvin to see an available therapist further away. *Some* effort must be made to overcome obstacles to the provision of reunification services.” (*Alvin R.*, *supra*, 108 Cal.App.4th at p. 973.)

The Agency maintains “[t]his case was not like *In re Alvin R.*” It asserts it “has made every effort to overcome obstacles, and the mother has been able to visit with [M.M.] The Agency has attempted to overcome obstacles in arranging family therapy, for example by resolving the issue of finding a Spanish-speaking therapist, and by providing the mother transportation to visit [M.M.]” The Agency, however, did not “resolv[e] the issue of finding a Spanish-speaking therapist” until after the six-month review period. Other than contacting one out-of-county therapist and placing Mother on

a waiting list for services, the record contains no evidence of any other efforts made to locate an available Spanish-speaking therapist, either in San Mateo County, the residence of Mother and M.M., or in San Benito County, where M.M. had been placed in a foster home, or in Santa Clara County, where M.M. was receiving individual therapy. Moreover, on February 3, M.M. was placed in Canyon Oaks Youth Center, a facility with a bilingual therapist. Nevertheless, family therapy still did not begin due to “confusion” about whether it had to be supervised. There is no evidence in the record the Agency made any attempt to clarify that confusion. Once Canyon Oaks confirmed that the therapy did not have to be supervised, therapy still did not begin for almost a month. Mother and M.M. did not have a family therapy session until March 13, 2015, seven months after the disposition hearing.

The Agency also claims “it was the parent’s duty to take initiative and make reasonable efforts to reunify with [M.M.]” There is no evidence in the record that Mother failed to “take initiative” or failed to avail herself of any offered service. There is no dispute that Mother, despite being employed, having four other children, and not having a driver’s license, visited M.M. on approximately a weekly basis. Those visits took almost the full day every Friday, because M.M.’s placement was in Hollister and Mother lived in Redwood City.³ The Agency also claims Mother “at no point called the social worker, or initiated conversation with the social worker, requesting family or individual counseling.” This is a misleading summation of the social worker’s testimony. The social worker was asked: “At any time since the jurisdictional hearing and

³ The Agency makes much of the fact that the social worker drove Mother, who had no driver’s license, to the visitation. The Agency, however, is obligated to facilitate visitation, especially when the Agency placed M.M. out of San Mateo County, in Hollister; and arranged therapy for M.M. in Gilroy, about 50 miles from Mother’s home. (See *In re Riva M.* (1991) 235 Cal.App.3d 403, 414 [“the 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 (such as *helping to provide transportation . . .*).”

disposition has mom ever called you to request that counseling—family counseling or individual counseling^[4] commence? [¶] [Social Worker]: No. But we on our [weekly] ride over there [to visit M.M. in Hollister] would talk about the family therapy starting and we were both awaiting for her to be assigned a therapist.” The obstacle was the Agency’s inability to locate an available, Spanish-speaking therapist, not anything Mother did or did not do.

The juvenile court’s finding at the six-month hearing is not whether the Agency had a good excuse for not timely providing the services it determined were required for reunification. The court must determine whether reasonable reunification services were “provided or offered.” (§ 366.21, subd. (e)(8).) In this instance, there is no substantial evidence in the record demonstrating those services were offered or provided to Mother during the six-month review period. Neither is there evidence suggesting the failure to engage in family therapy was based on any fault of Mother. While there were certain periods of time within the six months during which M.M. was hospitalized, they do not account for the complete failure to provide family therapy.⁵

DISPOSITION

The juvenile court’s order is reversed only with regard to the finding that Mother received reasonable reunification services, and that finding is vacated. The matter is remanded to the juvenile court to enter a new order finding that reasonable services were

⁴ The individual therapy was recommended by the Agency after the first six-month period, and the claim Mother failed to request its initiation is not relevant to this appeal. The record shows, however, that the social worker gave Mother a referral for individual therapy in April, and Mother in fact followed up with a phone a call to that referral.

⁵ Mother requests, pursuant to Code of Civil Procedure section 170.1, subdivision (c), that we direct all further proceedings in the juvenile court be heard before a different judge, but provides no specific reason to do so. Mother has made no showing that “the interests of justice” require “that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed” (Code Civ. Proc., § 170.1, subd. (c).)

not provided, and to order the Agency to provide such services. In all other respects, the order is affirmed.

Banke, J.

We concur:

Humes, P. J.

Dondero, J.