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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

BIANCA R., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN
FRANCISCO COUNTY,

Respondent;

CITY AND COUNTY OF SAN
FRANCISCO, HUMAN SERVICES
AGENCY,

Real Party in Interest.

A145378

(San Francisco County
Super. Ct. No. JD15-3004)

K.S. (Minor) is the child of petitioners Bianca R. (Mother) and Troy S. (Father) (jointly, Parents). The San Francisco Human Services Agency (Agency) filed a Welfare and Institutions Code section 300¹ petition alleging Minor is within the jurisdiction of the juvenile court. The court found jurisdiction, bypassed reunification services to Parents under section 361.5, subdivision (b)(10), and set a section 366.26 permanency planning hearing for October. Parents filed the present petitions for extraordinary writ relief, and Agency filed a return. We affirm the juvenile court's finding it has jurisdiction over Minor, but we reverse the court's decision to deny Parents reunification services.

¹ All undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

Minor is an infant boy born on January 1, 2015 in San Francisco. The Agency filed a section 300 petition (Petition) on January 7. Regarding Mother, the petition alleged a basis for jurisdiction under section 300, subdivision (b) because Mother tested positive for marijuana at the time of Minor's birth, had a history of unresolved substance abuse and mental health issues, and had received little prenatal care. Regarding Father, the petition alleged a basis for jurisdiction under section 300, subdivision (b) because Father had a history of unresolved substance abuse and mental health issues. As to both Parents, the petition alleged a basis for jurisdiction under section 300, subdivision (b) because there is a history of numerous child welfare referrals alleging neglect of Minor's siblings. The petition also alleged a basis for jurisdiction under section 300, subdivision (j) because Minor's siblings are dependents in Santa Barbara County who were removed for general neglect and because reunification services as to those siblings were terminated in July 2014 due to lack of compliance with treatment programs and failure to visit.

The Agency's detention/jurisdiction report related that Minor had been brought to Agency's attention due to a report, apparently from the hospital, that Mother tested positive for marijuana at the time of Minor's birth and stated she had smoked marijuana the week before the birth and received little prenatal care. Minor was healthy and needed no special medical attention. The Parents, who were homeless, told the Agency that four months earlier they made plans for Minor to be taken care of by one of Father's cousins in San Francisco, to give Parents an opportunity to get more stable. The cousin confirmed that she had agreed to care for Minor months earlier. The Parents told the Agency they had been taking parenting classes they paid for themselves.

The Agency determined that Minor has five siblings who are dependents in Santa Barbara County. A social worker in Santa Barbara informed the Agency that Minor's siblings were removed from Parents' custody in December 2013 due to general neglect. The family was living in a van, the children were dirty and hungry, one of the children had ringworm, and it was unclear whether the children were receiving medical checkups and immunizations. Reunification services were terminated in July 2014 due to Parents'

lack of compliance with substance abuse, mental health, and domestic violence treatment,² and failure to visit the children. The Santa Barbara worker informed the Agency that Father is bipolar and “self-medicates with marijuana.” An Agency social worker met with Father, and he told her he has a medical marijuana card.

On January 8, 2015, the juvenile court ordered Minor detained and authorized supervised visits. On January 30, the Agency filed a disposition report recommending that Parents be bypassed for services pursuant to section 361.5, subdivision (b)(10). The Agency placed Minor with Father’s cousin on January 9.

A combined jurisdiction and disposition hearing began on April 3, 2015. A social worker from Santa Barbara County testified regarding the circumstances that led to the detention of Minor’s siblings and Parents’ failure to engage in services. The Agency social worker initially assigned to the case testified Parents told her they believed substance abuse treatment was unnecessary. A second Agency social worker, assigned to the case in mid to late January, testified she told Parents the Agency was recommending bypass of services to them based on what happened in the Santa Barbara proceedings. The Parents indicated they were willing to pursue substance abuse treatment, but neither had entered treatment by the date of the April 3 hearing. The juvenile court continued the hearing to May 7.

On April 24, 2015, the Agency filed an addendum report in advance of the continued hearing date. The report included information about Parents’ visitation with Minor between February and April. An Agency social worker had testified at the April 3 hearing that the Agency was supervising visits because Father’s cousin “wasn’t comfortable with the visits occurring in [her] home and having to monitor and set limits with the parents.” The report detailed that on January 24, Father “got upset at” and “went off on” his cousin when the Parents were not able to schedule a visit with Minor at the last moment. At the first Agency-supervised three hour visit on February 5, Father seemed “restless and impatient” after two hours. He asked if they could have more

² The Agency cites to no evidence of domestic violence, either in Santa Barbara or in the Bay Area.

frequent two-hour visits. Father missed the next visit and both Parents were “drowsy” at the third visit on February 12; Father left early, explaining he needed to get to Glide church for assistance in getting BART tickets. At the fourth visit, on February 18, the Parents again requested shorter visits and said they had to leave after 1.5 hours in order to get beds at a shelter; Father said the visits were “too boring.” Between then and April 20, five visits did not occur because Parents canceled shortly before the visits, failed to confirm, or did not respond quickly enough to messages about scheduling changes. During that same period, Mother attended eight visits, and Father attended five visits. Parents informed the Agency that Father had to miss two of the visits due to a conflict with his work schedule. No concerns were reported regarding Parents’ behavior at any of the visits through April 20. In general, the addendum report reflects that Parents were active in communicating with the Agency regarding visitation.

The addendum report also described Mother’s efforts relating to substance abuse treatment. She failed to take advantage of one residential treatment program to which she had been referred, but she began engaging with another program in late February 2015. On March 9, a program coordinator stated the Parents’ “engagement is whenever you catch them, it’s hard for them to follow through.” On March 12, another program coordinator reported that Mother’s engagement was “up-and-down” and the Parents have a “very blas[e], taking it slow mindset.” Subsequently, the coordinator reported that Mother started to “show effort/engagement to follow through in trying to enter a residential treatment program” at the end of March. The counselor reported that Mother had started making a serious effort “recently.” Mother began treatment at Epiphany Residential Program on April 22. In the six weeks before she entered treatment, Mother missed two drug tests and tested positive for marijuana ten times.

The addendum report also described Father’s efforts relating to substance abuse and mental health treatment. On March 12, 2015, he told the Agency social worker he did not know that he needed to do substance abuse treatment, and he expressed preference for an outpatient program, rather than a residential program. On March 16, Father brought the social worker a letter from Westside Mental Health Services; the letter

indicated he had appeared for a mental health assessment, but the evaluation was not completed because Father is not interested in taking medication. In subsequent hearing testimony, the Agency social worker explained that Father went on his own to get the evaluation even before she had an opportunity to refer him. The addendum report explained that Father told the Agency social worker that he does not need medication because “his physician is okay with him using marijuana to treat his anxiety and bipolar symptoms.” Father expressed a willingness to obtain an evaluation, but an unwillingness to take medication. On March 30, Father requested a referral to a therapist. The Agency provided him a referral to a therapist named Mike Scott on April 16, and Father indicated he had also gotten a referral from another program on his own. Father tested positive seven times for marijuana between March 12 and March 31, then missed a test, and then tested positive for marijuana three more times.

The addendum report also stated that Father told the Agency social worker on March 12, 2015, that he had obtained a 2-year lease on a three bedroom house in Pinole; he provided the address to the Agency.

The jurisdiction/disposition hearing resumed on May 7, 2015 and finished on May 8. An Agency social worker testified the recommendation was to bypass reunification services due to Parents’ prior history and their insufficient progress in the present proceedings. She noted Mother had been in residential treatment for only 15 days and Father only started therapy in late April. She was concerned about Father’s marijuana use, because she did not know if Father could care for Minor while under the influence.³ She testified she felt “it’s a minimal chance that [Parents] would change their behavior given their history of not engaging in the past and their delay in engaging at this point.”

Father also testified at the hearing. He explained that six months prior to Minor’s birth, he called a cousin in San Francisco and made arrangements for her to temporarily

³ She also testified she had understood from Father that the marijuana was intended to treat his anxiety rather than his bipolar disorder. The same social worker stated in the addendum report that Father told her his physician was aware he was using marijuana to treat both his anxiety as well as his bipolar disorder.

care for Minor when he was born. Father bought supplies, including a crib, and stayed in contact with his cousin leading up to the birth. Father has a job at a restaurant in San Francisco, and works five or six days a week. He has housing that he found with the help of relatives.

When asked about his mental health, Father explained that about nine or ten years ago he was diagnosed as suffering from bipolar disorder and anxiety. He tried various psychotropic medications, but could not tolerate the side effects, including weight gain and a feeling of being disengaged and “in a comatose state.” He stopped taking psychotropic medication in 2007. He currently possess a medical marijuana card that he received after a “thorough evaluation.”⁴ He informed the doctor of his diagnosis of bipolar disorder. The card was renewed in October 2014. Father presently smokes marijuana once or twice a day, but not before work, interacting with children, operating heavy machinery, or driving a motor vehicle. The marijuana alleviates the symptoms of his mental illness. Father sought a mental health evaluation from Westside Community Services, but they only offered medication, not therapy. He subsequently obtained access to a therapist through a referral from the Agency; he finds therapy helpful and intends to continue.

Following argument of counsel, on June 8, 2015, the juvenile court amended the Petition, sustained the Petition as amended, ordered Minor removed from Parents’ care, ordered that Parents not receive reunification services, and reduced the frequency of visitation from twice to once a week. The court set a section 366.26 hearing for October 14, 2015. Both Parents filed writ petitions for extraordinary relief, and, on July 31, this court issued an order to show cause and authorized the Agency to file an opposition, to be deemed the return to the order to show cause. The Agency filed its opposition on August 10.

DISCUSSION

⁴ The Agency social worker admitted that Father’s case plan requires him to stay free of “illegal drugs.” She did not clarify whether the legal use of medical marijuana constitutes use of an illegal drug.

I. *The Juvenile Court Has Jurisdiction Over Minor*

At the outset, we address Father's contention there was insufficient evidence to support jurisdiction over Minor under section 300, subdivisions (b) and (j). He argues the evidence regarding his mental health and alleged substance abuse did not demonstrate a substantial risk of serious physical harm to Minor at the time of the jurisdiction hearing, and the neglect suffered by Minor's siblings did not demonstrate a substantial risk of harm to Minor. However, neither Mother nor Father argues it was improper for the juvenile court to assume jurisdiction over Minor based on the allegations regarding Mother's mental health and substance abuse. "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451; accord *In re Ashley B.* (2011) 202 Cal.App.4th 968, 979.) "As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate." (*In re Ashley B.*, at p. 979.) Thus, we need not consider Father's challenges to the evidence supporting the findings based on his conduct and the neglect of Minor's siblings.

In any event, although determination of the propriety of jurisdiction based on the evidence of Father's alleged substance abuse and mental health problems would require some consideration, it is clear the juvenile court had jurisdiction under section 300, subdivision (j). Although Parents had made some progress by the time of the jurisdiction hearing, the neglect of Minor's siblings was recent and it was clear the problems that resulted in the Santa Barbara County proceedings had not been resolved.

II. *The Juvenile Court Erred in Denying Reunification Services*

The more substantial issue in this writ proceeding is whether the juvenile court erred in denying Parents reunification services. We conclude it did err. "There is a presumption in dependency cases that parents will receive reunification services.

[Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement ‘that it may be fruitless to provide reunification services under certain circumstances.’ ” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95–96 (*Cheryl P.*).

As relevant in the present case, section 361.5, subdivision (b) reads:

“Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings . . . of the child because the parent . . . failed to reunify with the sibling . . . after the sibling . . . had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling . . . of that child from that parent. . . .” Thus, application of that exception requires findings that, “(1) the parent previously failed to reunify with a sibling of the child; and (2) the parent failed to make reasonable efforts to correct the problem that led to the sibling being removed from the parent’s custody.” (*Cheryl P., supra*, 139 Cal.App.4th at p. 96.) We review the juvenile court’s order denying reunification services under section 361.5, subdivision (b) for substantial evidence. (*Ibid.*)

It is undisputed the first prong of section 361.5, subdivision (b)(10) is satisfied here, because Parents failed to reunify with Minor’s siblings. Parents do contend, however, that substantial evidence does not support a finding that they failed to make a reasonable effort to treat the problems leading to removal of Minor’s siblings. “The ‘no reasonable effort’ clause provides a means of mitigating a harsh rule that would allow the court to deny services based only upon the parent’s prior failure to reunify with the child’s sibling ‘when the parent had in fact, in the meantime, worked toward correcting the underlying problems.’ ” (*Cheryl P., supra*, 139 Cal.App.4th at p. 97.)

Mother acknowledges she was slow to start substance abuse treatment, but by March 2015 she was accepted into a residential program and a treatment coordinator reported she had “really made the effort to try to get into treatment.” Due to “shortages” at the program, Mother was not able to enter until April 22. Mother also visited Minor regularly and was appropriate with Minor. Father points out that, after Minor was born, Father secured employment and housing. He sought out and has engaged in therapy. He sought a psychological evaluation, but it was not completed because he stated he would not take psychotropic medication. Father failed to seek substance abuse treatment, although he did comply with testing and did not test positive for anything other than marijuana, which he is using by doctor’s recommendation. It is not clear whether that marijuana use is in violation of the Agency’s case plan, which requires him to stay free of “illegal drugs.” Father visited Minor regularly; he did miss some visits, apparently largely due to conflicts with his work schedule. Before Minor was born, Parents made arrangements for Minor to reside with a responsible caregiver and took parenting classes.

In arguing that Parents’ efforts were unreasonable, Agency largely emphasizes the their failure to reunify with Minor’s siblings in the Santa Barbara proceedings. However, that ignores the major change in life circumstances that took place after that failure to reunify, in that Parents moved to the Bay Area where they had support from Father’s family. While the family’s homelessness was an important factor in the Santa Barbara proceedings, Parents now have obtained housing and Father has obtained employment. Moreover, unlike Santa Barbara, the Agency did not prohibit Parents from visiting Minor due to their positive tests for marijuana use; Parents’ failure to visit Minor’s siblings was a significant factor in the prior termination of reunification services. In arguing that Mother’s efforts in the Bay Area were unreasonable, the Agency only refers to the delay in commencement of substance abuse treatment. In arguing that Father’s efforts in the Bay Area were unreasonable, the Agency emphasizes Father’s failure to obtain substance abuse treatment or mental health treatment other than therapy.

In *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464, the Court of Appeal observed that the “ ‘reasonable effort to treat’ standard [under section 361.5,

subdivision (b)(10),] is not synonymous with ‘cure.’ The mere fact that [mother] had not entirely abolished her drug problem would not preclude the court from determining that she had made reasonable efforts to treat it.” *Renee J.* also stated: “Section 361.5 authorizes, but *does not require*, the court to deny services in the specified circumstances. Even if the court had sufficient evidence to conclude that [mother’s] efforts to address her drug problem were insufficient to that point, it could nonetheless have focused on the fact she had made significant changes in her lifestyle since the removal of her other children, and determined that further efforts to deal with the problem would not have been ‘fruitless.’ ” (*Ibid.*; see *Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750 [explaining that the exceptions to reunification found in § 361.5, subd. (b), reflect a recognition by the Legislature that “it may be fruitless to provide reunification services under certain circumstances”].) “It should (but cannot) go without saying that ‘fruitless’ is a pretty high standard. If the evidence suggests that despite a parent’s substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current child could be saved, the courts should always attempt to do so. Courts must keep in mind that ‘[f]amily preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced.’ [Citation.] The failure of a parent to reunify with a prior child should never cause the court to reflexively deny that parent a meaningful chance to do so in a later case. To the contrary, the primary focus of the trial court must be to *save* troubled families, not merely to expedite the creation of what it might view as better ones.” (*Renee J.*, at p. 1464.)

Although it is clear Parents did not “ ‘cure’ ” the problems that led to removal of Minor’s siblings (*Renee J.*, *supra*, 96 Cal.App.4th at p. 1464), neither were their efforts “lackadaisical or half-hearted” (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 99). Moving to the Bay Area—where Parents had support from Father’s family—was a major step, and Parents were able to relieve the homelessness that was a major factor in removal of Minor’s siblings. Parents also acted with foresight in arranging for care of Minor with Father’s family and took parenting classes. By the time of the jurisdictional hearing,

Mother was in residential drug treatment, and the Agency has raised no other concerns regarding her ability to care for Minor. Although Father continued to resist substance abuse treatment and mental health treatment involving psychotropic medication, his drug use was limited to medical marijuana and he was engaging in therapy. These efforts are significant, although actual reunification will require Father to either cease using marijuana or convince the juvenile court that his use of marijuana does not present a risk to Minor, which will require a greater level of cooperation with the Agency in obtaining evaluations from substance abuse and medical professionals. Keeping in mind that “the primary focus of the trial court must be to *save* troubled families” (*Renee J.*, at p. 1464), we conclude substantial evidence does not support the juvenile court’s decision to bypass reunification services under section 361.5, subdivision (b)(10).⁵

DISPOSITION

Let a writ issue directing respondent juvenile court to vacate its orders denying reunification services to Parents, reducing visitation, and setting the matter for a section 366.26 permanency planning hearing. The juvenile court is further directed to enter a new order providing Parents with appropriate reunification services and to conduct further proceedings consistent with this opinion. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

⁵ We will also reverse the juvenile court orders reducing visitation and setting a section 366.26 hearing, both of which followed from the denial of reunification services.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.

(A145378)

