

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

N.V.,

Petitioner,

v.

SUPERIOR COURT FOR THE CITY
AND COUNTY OF SAN FRANCISCO,

Respondent;

SAN FRANCISCO HUMAN SERVICES
AGENCY et al.,

Real Parties in Interest.

A145489

(City & County of San Francisco
Super. Ct. No. JD 14-3103)

N.V. (Mother) is the mother of K.V. (Minor), born July 2013. She challenges the juvenile court's June 9, 2015 decision to terminate reunification services and set the matter for a Welfare and Institutions Code section 366.26 hearing.¹ Because we cannot conclude the juvenile court abused its discretion in denying Mother four additional months of reunification services, we deny Mother's petition.

FACTUAL AND PROCEDURAL BACKGROUND

On September 24, 2013, the Contra Costa County Children & Family Services Agency (the Agency) filed a section 300 petition, alleging that Minor was at risk for

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

serious harm due to domestic violence. The petition alleged both parents were violent towards one another in the child's presence.² According to the Detention/Jurisdiction Report, filed September 25, 2013, the parents met in October 2012 through a mutual friend with whom Mother had been in a violent relationship. Mother then lived with her own mother, stepfather and two half-sisters, but Mother and Father planned to live together. Mother had just turned 17 years old. The maternal grandmother³ reported that since Mother was approximately 15 years old she had run away from home for extended periods of time more than 10 times. The maternal grandmother believed that while Mother was away she had been exposed to alcohol, marijuana, sex, and violence. Child welfare records corroborated numerous referrals concerning Mother as a runaway minor. The maternal grandmother stated she tried to engage counseling services for Mother and had enrolled her in a high school designed for young mothers. She wanted to provide a home for Mother and assist her, but was concerned that she would be unable to guarantee Minor's safety because she could not prevent Mother from putting him in dangerous situations.

Minor was placed in foster care on September 20, 2013, and was formally detained at a September 25, 2013 detention hearing. Mother was to be provided parenting education and domestic violence services.

On January 13, 2014, the Contra Costa court found Minor to be a dependent juvenile, entered dispositional orders, and ordered reunification services for the parents to address the issue of domestic violence. Because each of the parents relocated to their family homes in San Francisco, the Contra Costa juvenile court transferred the case to the San Francisco Superior Court.

² The section 300 petition makes allegations concerning both Mother and the alleged father (Father). Because the petition filed in this court only concerns the termination of services for Mother, this opinion will focus on aspects of the case that concern her.

³ We refer to the Minor's grandmother as the "maternal grandmother." When necessary, we will refer to the Minor's great-grandmother as "Mother's grandmother."

On March 18, 2014, the San Francisco court appointed counsel for the parents, granted Father presumed father status, and denied without prejudice the parents' request to increase visitation beyond the twice-monthly, two-hour, supervised visits previously ordered.

On March 28, 2014, Mother sought a juvenile restraining order against Father. In a sworn declaration she alleged that he had assaulted or attempted to assault her, attempted to injure her, and caused her to fear physical or emotional harm. She alleged instances in September 2013 when he punched and choked her in Minor's presence; she slapped him when they were arguing, and he locked her out of the house. She stated that she tried to leave him many times. When she finally did break up with him in February 2014, Mother was threatened by Father and the mother of his older child. Although Father was in jail in March 2014, Mother was "very scared" that he or the older child's mother would harm her. On April 18, 2014, the juvenile court issued a one-year restraining order against Father. That same day, it also granted the Agency discretion to allow Mother unsupervised visits with Minor provided that Minor's counsel received 48 hours notice.

The Agency filed a status review report on June 19, 2014, in anticipation of the six-month review hearing recommending that Minor remain in his out-of-home placement, and that the parents be given an additional six months of reunification services. Mother had a history of juvenile probation for a previous domestic violence case, and had participated in five weeks of group therapy.

Mother, who was still a minor, lived with the maternal grandmother and various members of her family. The maternal grandmother had recently separated from her husband and reunited with Mother's father. Maternal grandmother and grandfather were expecting another child, and planning to find a home in the East Bay and have Mother move in with them. Mother was reported to have had a difficult time "staying in the care of her mother" and left her care for weeks at a time to live with a friend, who her family believed was a prostitute. Both the maternal grandmother and Mother's grandmother reported that Mother had "outbursts," would get upset over trivial matters, and go to live

at her friend's place without permission. The Agency opined that Mother was possibly depressed and would benefit from individual therapy.

During her visits with Minor, Mother was described as being "present, loving, and attentive." She had learned appropriate skin care for the baby's eczema and appropriate feeding.

The report noted that Mother had also previously been referred to social services as a possible dependent child. The Agency reported: "The Mother lives with her mother and grandmother in San Francisco, and her grandmother is currently overwhelmed with having her daughter and granddaughters in the home and is limited in her ability and willingness to help the mother reunify with her son. In addition to this, the mother continues to come and go from her grandmother's home without permission from her own mother, which is not establishing a consistent and stable home environment which is needed for [Minor]. The mother's family clearly loves and cares for [her] and wants her to get the treatment that she needs so that she may stabilize and reunify with [Minor]."

Before the six-month review hearing, however, the Agency filed an addendum report on August 21, 2014, which reversed its recommendation for the continuation of services. "Since the [earlier] report, . . . the parent's [sic] participation in their case plan requirements, visitation with the minor, and contact with the Department has declined." Mother had missed five scheduled visits. She failed to follow through on referrals for individual therapy and for a domestic violence program. Mother had been continually arguing with her mother and one time police were called to the home. At the time of the report, she was staying with a friend in San Francisco and refusing to return home.

The Agency confirmed with Contra Costa officials that Mother's non-participation in the services offered to her in San Francisco was consistent with the pattern she had established in Contra Costa. The Agency filed its supplemental report nearly 11 months after Minor was detained, yet the parents had shown little progress in their respective case plans. The Agency's summary regarding Mother was that she was "sporadic with her visits with [Minor], has not made an effort to participate in any services offered to her,

and is unstable in her home life.” Accordingly, the Agency recommended that services be terminated and a section 366.26 hearing be set.

Notwithstanding the Agency recommendation, on September 25, 2014, the juvenile court ordered additional reunification services be provided to Mother. The court authorized unsupervised visits and set the matter for a 12-month review.

In October 2014 Minor was placed in his maternal great aunt and uncle’s home. They were both described as supportive of reunification but willing and able to provide long-term care for Minor if necessary.

The Agency filed its status review report on October 29, 2014, and recommended an additional six months of services for Mother. Mother had just turned 18. She was living in public housing with her friend and members of her friend’s family. She was in an independent study program in high school, but was unemployed and had no steady source of income. She sometimes received money from babysitting, from the friend she was living with, and occasionally, from her parents. Her relationship with her parents was described as “strained” and she did not feel that she received needed support from them. Mother was having unsupervised visits with Minor and participating in both individual therapy and domestic violence services. Accordingly, on November 20, 2014, the juvenile court ordered that additional reunification services be provided and set the matter for an 18-month review hearing.

In its status report for the 18-month hearing, filed March 3, 2015, the Agency again recommended termination of reunification services. According to the report, Mother had “not demonstrated her ability to stand in the parental role with her son . . . as evidenced by her visits during the last six months.” There were problems concerning Mother’s picking up and returning Minor to her aunt and uncle’s home. Mother sometimes would demand that the uncle pick Minor up on short notice. The report described Mother as “disrespectful” towards her aunt and uncle, unreasonably expecting them to accommodate her requests. Aunt and uncle reported that Minor would return from visits with Mother hungry and upset and then have a difficult time sleeping.

Mother also failed to communicate with the social worker when visits took place at sites other than her school, as she had been asked to do. Furthermore, the frequency of the visits decreased from twice a week to once a week in the month before the report was prepared. Summarizing Mother's 18-month struggle to visit Minor consistently, the report concluded, "this visitation schedule has only highlighted [Mother's] lack of responsibility, follow through, consistency, and shows her difficulty in working with others and her inability to make changes in order to demonstrate her ability to care for and parent her son."

In addition, the status report also stated that Mother was referred to the Safe Care program to develop parenting skills, but she was on the verge of being expelled from the program because of her minimal efforts. Similarly, Mother failed to follow through on an Infant Parent Program that was offered through her high school. The report noted that when Mother was living with her own mother and grandmother, she frequently did not follow house rules, had verbal outbursts, and stole money. Although she had begun individual therapy in September 2014, she stopped her sessions and had not met with her therapist for approximately three months at the time the report was filed.

The report concluded that Mother had participated minimally in services over the preceding 18 months. She had been offered six different programs plus individual therapy. Her actions demonstrated that she was "not able, willing, or ready to stabilize herself or to resume care for her son. . . ." Since entry of the dispositional order in January 2014, Mother only really participated in services from September through December 2014. Her attendance at school was poor. She tended to blame others for her problems, minimized or denied her own problematic behavior, and believed she did not need help from other people. Based on these facts, the Agency recommended that services to Mother be terminated and that the juvenile court set a section 366.26 hearing.

On April 21, 2015, the Agency filed a form, JV-180 (Request to Change Court Order), seeking to have Mother's visits with her son suspended due to her "volatile, aggressive" behavior. Mother's attorney had forwarded a text to the social worker from Mother which said: "I will get [Minor] back whether I get him the right way or killing

that motherfucker [maternal uncle] himself.” The next day the juvenile court suspended visitation pending the 18-month review hearing on May 4, 2015.⁴

At the 18-month review hearing, the social worker reiterated her recommendation that reunification services be terminated and a section 366.26 hearing be set. She testified that since March 2014, Mother had lived in approximately six different homes, including with a friend who the family believed was a prostitute. The social worker believed that Mother moved when she came into conflict with people and this pattern would adversely affect the child if he were with her. She also testified that Mother had participated in individual therapy focused on domestic violence for three months, had met regularly with a public health nurse about domestic violence, and while on juvenile probation, had previously completed a five-week group program focused on domestic violence.

The social worker reported she had had many conversations about domestic violence with Mother. They discussed her pattern of relationships, including situations in which she was physically violent. Although Mother came to understand that continuing a relationship with Minor’s father was not desirable, the social worker did not believe that Mother learned how to implement changes regarding possible future relationships. For example, on one occasion when the police were called, there had been a physical altercation between Mother and the maternal grandmother.

The social worker testified that since approximately October 2014 Mother had been consistently late picking Minor up and dropping him off at the uncle’s home.

Mother testified on her own behalf. She disputed the testimony about the visits, claiming that she typically arrived on time, but that her aunt and uncle would make her wait. She also claimed there were times when she would bring Minor home and no one was there. She explained that she once brought Minor back to her uncle’s house six

⁴ The order actually refers to a May 4, 2014 18-month review hearing. As is apparent from the file stamp, April 23, 2015, and from the general context of events, the hearing was in May 2015.

hours late because she had received a call instructing her to come to the Westfield Mall to fill out paperwork so she could start a job the next day. She considered it urgent because of competition for the job vacancy. She called her uncle, explaining that she had to fill out paperwork, and asked him whether she should take Minor with her or could he come pick him up. He told her to do what she needed to do. She spent about two hours filling out the necessary forms and meeting with her managers, went to a convenience store to get Minor a snack and something to drink, and then returned by train to her aunt and uncle's. She conceded that she never told her uncle how late she was going to be, but while she was on her way to drop him off, she called to say she would be there as soon as possible.

Mother testified that she knew that her mother's home had not been approved as a placement for Minor. This was because Child Protective Services reports had previously been filed against her mother. She explained, however, that her father, in making those reports, was simply being spiteful.

She did not know why her individual therapy had ended. The therapist just stopped coming to the appointments at her school. Although she tried unsuccessfully to contact the therapist, she never asked the social worker for another referral. She also explained that she had missed approximately one month's visits and calls with Minor because she became ill, and when she called the hospital, was advised to stay in bed.

The nurse from Mother's school also testified. She met with Mother roughly on a weekly basis, beginning in February 2015, for 45 minutes to an hour to provide counseling and education. Before that they met on an "as needed" basis. The nurse observed Mother with Minor many times and had no concerns about the child's safety. She described Mother as patient with him and appropriately protective. She believed Mother had a solid understanding of her parental role. She had discussed domestic violence with Mother. Although the nurse believed that every woman is at risk of domestic violence, Mother had expressed the desire to change and to ensure that her child did not have to endure the effects of domestic violence. The nurse believed Mother had "worked through processing" her past domestic violence.

After taking the matter under submission the juvenile court regretfully announced that it would not return Minor to Mother. The court found that despite Mother's moderate efforts at reunification, Minor continued to be at a substantial risk of harm. Mother's behavior was still volatile. The court cited the threatening text Mother had sent about her uncle. She had also failed to establish stable and consistent housing. The combination of Mother's volatility and instability created a substantial risk to Minor's safety and physical and emotional well-being. The juvenile court terminated reunification services.

Mother filed a timely notice of intent to file a writ petition in the superior court. She filed her petition on August 31, 2015, and this court issued an order to show cause that same day. After the Agency filed its opposition, Mother requested oral argument. We then stayed the section 366.26 hearing in the juvenile court and heard arguments on October 14, 2015.

DISCUSSION

Mother argues that (1) she has a fundamental right to raise her child, (2) she fully complied with the essential elements of her reunification plan and the conditions that justified Minor's detention no longer exist, and (3) the juvenile court improperly exercised its discretion when it terminated reunification services.

We review the juvenile court's finding that returning Minor to Mother would present a substantial risk to his well-being for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) Thus, we resolve all conflicts and make all reasonable inferences to support the juvenile court's orders where feasible. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.) “ “The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.” ’ ’ (*Ibid.*, citing *In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393–1394.) We review the juvenile court's refusal to extend family reunification services beyond the statutory deadline for abuse of discretion. (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388 (*Andrea L.*))

We agree with Mother that she has a constitutionally protected right to raise a family. (*Stanely v. Illinois* (1972) 405 U.S. 645.) Mother’s right, however, is not absolute. The state has a legitimate interest in the minor’s welfare and safety. A minor must be removed from his parents’ custody where the minor’s welfare and safety require that action. (*Id.* at p. 652.) The question before us is whether Minor’s removal is necessary for his welfare and safety.

Mother argues that removing Minor from her care was no longer justified because any threat of domestic violence was over and she had fully complied with the reunification requirements surrounding that concern. She contends that her case plan originally had but two components—that she engage in domestic violence treatment and participate in couple’s counseling with Father. In fact, Mother obtained a restraining order against Father, ended her contact with him, and had had no further domestic violence incidents. But after Mother obtained a restraining order against Father, her case requirements were modified to require that she participate in domestic violence therapy and obtain safe and stable housing. Given that she “fully addressed the safety issue that had brought this case before the court,” Mother claims that Minor ought to have been returned to her once her issues with Father were resolved.

But Mother’s commitment to therapy and domestic violence treatment was, at best, diffident and tentative. As a child, Mother had been the object of social service interventions. Before her relationship with Father, she was in an abusive personal relationship. Her relationship with Father involved mutual violence. After that relationship ended she continued to have emotionally volatile episodes as demonstrated by the threatening text she sent about her uncle and the physical fight with her Mother when the police were called. Violence appears to be an ongoing issue for Mother that was not just due to her association with Father. Despite the long-standing and severe nature of her behavior, she had not participated in individual therapy since early December 2014. Furthermore, Mother was aware of the importance of actively participating in her case plan based on the Agency’s August 2014 addendum report when

it recommended termination of services in part due to Mother's non-compliance. Despite that clear warning, she remained noncompliant.

The evidence demonstrates that Mother frequently changed her residence, sometimes living in questionable circumstances. Moreover, it appears she moved as frequently as she did as a way to cope with conflict which she was otherwise unable to resolve. There is nothing in this record to support her claim that she had safe and stable housing. That fact alone defeats her claim that she had fully addressed the safety issue that brought her before the court.

At the 18-month permanency review hearing, the juvenile court is to return the child to the parents unless it determines that doing so would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. (§ 366.22, subd. (a).) "The failure of the parent . . . to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (*Ibid.*) In light of Mother's moderate participation in her plan, her continued anger and emotional outbursts and her unstable housing, we cannot conclude the finding that minor remained at risk of serious harm was unsupported by substantial evidence.

Mother also challenges the juvenile court's exercise of discretion to terminate her reunification services because it ignored its implicit authority to extend services beyond 18 months to help a juvenile "special needs" parent. Mother cites *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774 (*Elizabeth R.*) and *Andrea L. supra*, 64 Cal.App.4th at p. 1388 for the general proposition that in rare instances or under extraordinary circumstances reunification services are appropriate beyond the normal statutory deadline. She also cites section 352 for the proposition that a juvenile court has discretion in any dependency hearing to extend statutory time limits if it is not contrary to the child's interest.

In *Elizabeth R.* the mother had an "impeccable record of visitation and efforts to comply with the reunification plan." (*Elizabeth R., supra*, 35 Cal.App.4th at pp. 1777–1778.) In contrast to the mother in *Elizabeth R.* and as explained above, Mother does not

have an “impeccable record” of either visitation or compliance with her case plan. Thus, *Elizabeth R.* is factually distinguishable from Mother’s situation.

In *Andrea L.* the juvenile court denied the Mother’s request to extend services. The appellate court denied her writ request, distinguishing it from cases where the extension of reunification services beyond 18 months was justified because some external factor prevented the parent from participating in the case plan. (*Andrea L., supra*, 64 Cal.App.4th at p. 1388.) The mother’s failure in *Andrea L.* was due to her relapse into drug use and not to some external factor over which she lacked control. (*Id.* at p. 1389.) In this case, there is no factual showing that Mother’s failure to comply with her case plan by attending therapy and finding appropriate housing was due to external factors or to her youth. Reports consistently describe Mother as an intelligent, articulate young woman. There is nothing in the record that suggests she could not appreciate the gravity of her situation or that she was unable to respond to its challenges due to external considerations or her young age.

Finally, Mother argues that Senate Bill 68, which was pending before the legislature when Mother filed her petition, is an effort to legally define teenage parents as “special needs” parents due to their biological immaturity. Senate Bill 68 was signed into law by the Governor on September 9, 2015. It amends sections 366.21 and 366.22 and requires juvenile courts to take into account “the particular barriers” to reunification which a minor parent faces. It also authorizes the juvenile court to continue a case for up to six months to provide additional reunification services to a minor parent “who is making significant and consistent progress in establishing a safe home for the child’s return. . . .” (2015 Cal. Legis. Serv. Ch 284 (S.B. 68) (West).) Of course, this law was not in effect at the time the juvenile court entered the orders challenged in this case and will not become effective until January 1, 2016. But, even if Senate Bill 68 had been effective when the juvenile court made its findings, the result here would be unchanged because Mother was not making the “significant and consistent progress” to fulfill her case plan required under section 366.22 as amended by Senate Bill 68.

Thus, we cannot conclude that the juvenile court abused its discretion when it declined to extend services to Mother beyond the normal 18-month period. In order to do so, the court would have to have been convinced of a substantial probability that Minor would be returned to Mother's care at the end of those four months. The record does not compel that conclusion.

DISPOSITION

The petition for an extraordinary writ is denied. The stay issued by this court on September 21, 2015, is dissolved. To expedite the prompt resolution of this case, our decision is immediately final as to this court. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Siggins, J.

We concur:

McGuinness, P.J.

Pollak, J.