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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

A.G.,
Petitioner,
v.
THE SUPERIOR COURT OF
CONTRA COSTA COUNTY,
Respondent;
CONTRA COSTA COUNTY
CHILDREN & FAMILY SERVICES
BUREAU,
Real Party in Interest.

A145817

(Contra Costa County
Super. Ct. Nos. J14-00975,
J14-00976, J14-00977)

A.G. (Mother) seeks writ review of an order of the juvenile court setting a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.¹ Mother contends the juvenile court's finding that she was offered reasonable services is unsupported by substantial evidence. She also challenges the juvenile court's order setting the permanency planning hearing as unsupported by substantial evidence. We find no merit in either contention, and accordingly deny the petition.

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

FACTUAL AND PROCEDURAL BACKGROUND

This case concerns three of Mother's children, De, Da, and R (Minors). At the time of detention in September 2014, De was age 15, Da was nine, and R was one. By that time, Mother had had 23 prior referrals between 1998 and 2014, as well as two family maintenance cases. She had refused voluntary family maintenance services in 2011.

The current proceeding began in June 2014 after the Contra Costa County Children and Family Services Bureau (the Bureau) received two referrals regarding Mother's family. The first referral concerned a report of a domestic violence incident between Mother and R's alleged father, R.H. The second referral alleged general neglect to R in that he had not been taken to well-baby checks since birth despite numerous contacts by the public health nurse and his pediatrician.

Mother refused to cooperate with the Bureau's investigation of the referrals. The Bureau was unable to complete unannounced home visits. Mother refused to speak to the social worker, denied receiving correspondence from the social worker, refused to schedule an appointment with the worker, and did not attend an appointment scheduled for her.

With regard to the allegation of domestic violence, the Bureau's Detention/Jurisdiction Report stated that on June 17, 2014, the San Francisco Police Department was called at 3:00 a.m. to respond to a domestic violence report after a witness observed R.H. chasing and kicking Mother. Mother was uncooperative and refused to speak with any of the officers who arrived on the scene. She subsequently acknowledged there had been a physical altercation between her and R.H. when they were driving around in his new car. R.H. strangled Mother until she urinated on herself, pulled her out of the car, and then drove off with their son R, who was not secured in a safety seat. Mother stated there were at least five documented prior cases of domestic violence in the relationship.

On September 9, 2014, the Bureau filed petitions regarding Minors alleging Mother had exposed them to domestic violence and failed to provide R with adequate

medical care. The juvenile court detained all three children. On October 22, 2014, the court sustained the petitions and found Minors to be persons described in section 300, subdivisions (b) and (j).

The disposition report prepared for the November 20, 2014 hearing set out Mother's prior child welfare referrals and her criminal history, which reflected arrests from 1995 through 2014, including convictions for theft, driving under the influence, and transporting/selling controlled substances. The social worker's assessment explained Mother had been completely unwilling or incapable of recognizing the effect her choices, lifestyle, and behaviors had had on her children. According to the social worker, Mother had "proven to be extraordinarily elusive, and consequently virtually impossible to adequately assess or provide services to." Mother believed drug testing was unwarranted, although the worker noted "her substance use extends far beyond smoking marijuana."

The Bureau recommended a case plan that required Mother to participate in (1) a domestic violence program, (2) individual counseling, (3) mental health assessment, (4) substance abuse testing, and (5) a 12-step program and outpatient treatment if she tested positive.

At the contested disposition hearing on December 17, 2014, Mother was present and testified, as did the social worker. Mother was admonished regarding drug testing. The court removed Minors from Mother's custody and ordered family reunification services. The court adopted the recommendations of the disposition report, which included an admonition that because Minors included a sibling group with a child under the age of three, the juvenile court might terminate services within six months.

At the six-month status review, the Bureau's amended recommendation was termination of reunification services as to R. In its six-month review report, the Bureau explained services to the family included: (1) referrals to drug testing, (2) domestic violence class referrals, (3) bus tickets, (4) phone card, and (5) collaboration with the Pittsburg Police Department and Pittsburg Housing Authority. The Bureau reported that Mother had not engaged in any services, including drug testing. Mother denied that she was a drug addict and stated she would not drug test. When questioned about her

perception of her needs, Mother stated she was not getting any help from the Bureau because it did not pay her delinquent phone bill.

Minors continued to be placed together in the home of the nonrelated extended family member, who was interested in caring for them in long-term foster care, but not through legal guardianship or adoption. The Bureau noted that the recommendation to continue reunification services to the 12-month review was based on the age of the two oldest children and the children's connection to each other and to their mother.

At the court hearing on June 15, 2015, Mother drug tested at court and was positive for THC, opiates, and cocaine. The juvenile court explained that because all three Minors were placed together, it would be inclined to terminate reunification services as to all three children, not just as to R per the Bureau's recommendation.

The contested review hearing was conducted on July 6, 2015. Mother was again ordered to drug test for the court and tested positive for THC and cocaine. The social worker then assigned to the case testified, and she explained Mother had failed to attend a meeting with her in March. The worker mailed Mother a letter with referrals, but the letter was returned to the Bureau. Nevertheless, the social worker later handed Mother a letter with referrals for drug testing and domestic violence and mental health resources when Mother made an unannounced visit to the Bureau. The previous social worker on the case had already provided Mother with the same referrals. The social worker testified it was difficult to contact Mother, either by telephone or by unannounced visits. On two of her visits, the social worker saw cars in the driveway but no one responded to knocks or the doorbell.

In the beginning of June, Mother left a message for the social worker stating that she had contacted STAND, had called the drug testing line, and received a letter, which the social worker confirmed. Mother also said she had gotten in contact with a therapist. However, when the social worker took Mother to the Housing Authority in April, Mother had told the worker that she had a therapist "around the corner" from the authority but did not know the name or address. In her June message, Mother stated she had recently gotten in contact with the therapist who remembered her from December. Mother

continued to insist she would not drug test. At the time of the hearing, the social worker had not received any drug test results for Mother. Mother was in the process of being evicted.

In argument at the hearing, Mother's counsel stated Mother had "attempted to make some efforts complying with the reunification plan she's been given." Counsel said she believed Mother could complete the case plan if given additional time.

After considering the evidence and argument, the juvenile court terminated family reunification services as to all three Minors. It explained that Mother had "engaged in no services" except for visitation. The juvenile court noted the only evidence of drug testing were the tests to which the court had compelled Mother to submit, the results of which had been positive. Indeed, the court observed that Mother had tested positive for marijuana and cocaine the day of the hearing, and it concluded she was "actively engaged in drug use and abuse." The court set a permanency planning hearing for November 2, 2015.

Mother filed a notice of intent to file a writ petition on July 13, 2015, and filed her petition on August 18, 2015.

DISCUSSION

Mother first contends there was insufficient evidence she was offered or provided reasonable services. She also argues the juvenile court's orders were unsupported by substantial evidence, inconsistent with Minors' best interests, and contradicted the legislative intent of the juvenile dependency scheme. We address each contention in turn.

I. *Substantial Evidence Supports the Juvenile Court's Finding the Bureau Offered Mother Reasonable Services.*

Mother contends reunification services were not reasonable because the social worker testified she did not offer referrals to Mother until seven months after the date of removal. She argues the Bureau failed to present clear and convincing evidence she was offered reasonable services. (See § 366.21(g)(1)(C) [juvenile court shall not order a hearing pursuant to § 366.26 unless there is clear and convincing evidence that

reasonable services have been provided or offered to the parent].) We disagree with Mother.

A. *Governing Law and Standard of Review*

“ ‘The adequacy of reunification plans and the reasonableness of the [Bureau’s] efforts are judged according to the circumstances of each case.’ [Citation.] To support a finding reasonable services were offered or provided, ‘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. . . .’ [Citation.] [¶] We review the evidence most favorably to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.]” (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 691.)

B. *Assuming Mother Has Not Forfeited This Claim, It Is Meritless.*

“Many dependency cases have held that a parent’s failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court.” (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338.) Where, as here, a parent and her counsel fail to raise an argument or objection at the hearing at which the juvenile court terminates reunification services, the argument is deemed forfeited. (*In re Kevin S.* (1996) 41 Cal.App.4th 882, 885-886 [where juvenile court terminated reunification services despite finding reasonable reunification services had not been offered, mother forfeited argument on appeal by failing to raise objection in juvenile court].) In this case, Mother did not argue the Bureau had failed to offer her reasonable reunification services; she contended only that she could comply with the case plan if given more time. She has therefore failed to preserve the issue for appellate review.

Even if the issue had been preserved, it would be meritless. Initially, we note that Mother improperly focuses on the need for clear and convincing evidence that she was offered reasonable services. The clear and convincing evidence standard governs the trial court but is not a standard of appellate review. (E.g., *In re A.R.* (2015) 235 Cal.App.4th

1102, 1115 [clear and convincing standard in § 361, subd. (c) governs trial court but is not standard of appellate review].) On appeal, we review the juvenile court’s ruling under the substantial evidence standard. (See *id.* at p. 1116.)

The record provides ample support for the juvenile court’s finding. The Bureau developed an appropriate case plan to address Mother’s problems with domestic violence and substance abuse, and it attempted to involve Mother in services despite her resistance. The social workers made numerous attempts to contact Mother and engage her in the case plan, attempting telephone calls, written communication, face-to-face meetings, and unannounced visits to her home. Mother was “extraordinarily elusive,” but the first social worker assigned to her case made referrals for services required by the case plan. Despite her repeatedly documented and indisputable drug use, Mother refused to submit to drug tests save when compelled by the court, and she denied having a problem with drugs.

Mother’s claim that she was only provided referrals starting in April 2015 is simply wrong. She cites selectively to the social worker’s testimony at the hearing in which the worker stated she provided Mother with referrals in April 2015. Mother fails to mention the social worker also testified that her predecessor on the case had earlier provided the same referrals. Mother acknowledged being in contact with a therapist in December, when the first social worker was assigned to the case, a fact which indicates she had received a timely referral. Moreover, in her discussions with the social worker, Mother never claimed she had not received referrals to services; her only complaint was that the Bureau did not help her with paying a delinquent phone bill. Thus, substantial evidence supports the juvenile court’s reasonable services finding.

II. *Substantial Evidence Supports the Juvenile Court’s Decision to Set a Permanency Planning Hearing.*

In her second argument, Mother contends the juvenile court’s orders were unsupported by substantial evidence, were inconsistent with Minors’ best interests, and contradicted the legislative intent of the juvenile dependency scheme. Under this heading, Mother groups a number of other arguments unrelated to the contentions

specified in the heading. The California Rules of Court governing the content of juvenile writ petitions require that “[t]he memorandum . . . state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.” (Cal. Rules of Court, rule 8.452(b)(2).) We will therefore address the issues stated in the heading, but we will not “consider all of the loose and disparate arguments that are not clearly set out in a heading and supported by reasoned legal argument.”² (*Provost v. Regents of University of California* (2011) 201 Cal.App.4th 1289, 1294.)

At the six-month review hearing, the juvenile court may schedule a permanency planning hearing if it finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan. On the other hand, if the court finds there is a substantial probability that the children may be returned within six months, the court shall continue the case to the 12-month permanency hearing. (§ 366.21, subd. (e).)

California Rules of Court, rule 5.710 specifies that the court may terminate or continue services for any or all members of a sibling group, based on considerations such as (1) whether the siblings were removed as a group, (2) the closeness and strength of the sibling bond, (3) the ages of the siblings, (4) the appropriateness of maintaining the sibling group together, (5) the detriment to the child if sibling ties are not maintained, (6) the likelihood of finding a permanent home for the group, and (7) whether the group is placed together in a preadoptive home, if there is a concurrent plan for permanency for all

² We therefore do not consider Mother’s argument that the juvenile court failed to specify the factual basis for its conclusion that scheduling a permanency planning hearing was in the best interests of all members of the sibling group. (§ 366.21, subd. (e) [“The court shall specify the factual basis for its finding that it is in the best interests of each child to schedule a hearing pursuant to Section 366.26 within 120 days for some or all of the members of the sibling group.”].) We note that Mother failed to raise this objection in the juvenile court, and it is therefore forfeited. (See *In re Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1338.) In addition, even if we were to reach the issue, since the factual basis for the juvenile court’s decision is “clear from the evidence and discussion at the hearing and support the court’s decision, the court’s failure to make findings is harmless.” (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.)

siblings in the same home, (8) the wishes of each child and (9) the best interest of each member of the sibling group. (Cal. Rules of Court, rule 5.710(d).)

In this case, the juvenile court made a specific factual finding that Mother failed to participate regularly in the court-ordered treatment plan and that there was no substantial probability the children could be returned by October 22, 2015, even if services were extended to that date. (See § 366.21, subd. (e).) This finding was supported by the evidence we have outlined above, which showed that Mother had not regularly participated in any component of her case plan save visitation. Mother insisted throughout the proceeding that she should not have to drug test. She signed up for testing but never drug tested through the Bureau's drug testing provider. The only times she drug tested were when she was ordered to test at court, and in both instances her tests were positive for multiple controlled substances. Mother contacted a therapist in December but presented no evidence she regularly attended therapy. Similarly, she contacted STAND towards the end of the six-month reunification period, but there was no evidence she regularly attended that program.

The juvenile court's concluding remarks clearly indicate it considered the factors delineated in California Rules of Court, rule 5.710(d). Aware that Minors were placed together, the court expressed concern about the older boys' problem behaviors and the potential for R to grow up mimicking his brothers, presumably just as the older siblings had learned those behaviors from their mother. Whereas the older boys could articulate their wishes with regard to reunifying with their mother, the court noted R could not. It weighed the strength of the sibling bond, commenting, "this may be a case where sibling bond may be overridden and overcome by other concerns." The court clearly wanted permanency for R due to his young age.

As the juvenile court noted, "There are 23 prior referrals on this family and this mother. Two prior family maintenance cases and I believe one voluntary family maintenance matter. That's an extraordinary and extensive child welfare history, which is consistent with mother's criminal history and substance abuse and ongoing engagement in a relationship that is very dangerous and caustic and violent" In light

of this history and Mother's failure to engage in services, we conclude the juvenile court's decision to set a permanency planning hearing is supported by substantial evidence.

DISPOSITION

The petition for an extraordinary writ is denied on the merits. (§ 366.26, subd. (I)(4)(B).) This decision shall be final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Jones, P.J.

We concur:

Needham, J.

Bruiniers, J.