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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

J.G.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHILDREN
AND FAMILY SERVICES BUREAU et
al.,

Real Parties in Interest.

A146190

(Contra Costa County Super. Ct.
NO J15-00786)

In this juvenile writ proceeding, J.G. (mother) seeks extraordinary relief from the juvenile court order bypassing her for reunification services with respect to her infant son, Kingston E. (born July 2015), and setting a permanency planning hearing pursuant to section 366.26 of the Welfare and Institutions Code.¹ Mother's sole argument in this matter is that the juvenile court erred in finding that she failed to make a reasonable effort to treat her ongoing substance abuse problem, and, as a result, its bypass order based on that finding was improper. (See § 361.5, subds. (b)(10) & (b)(11) [bypass of reunification appropriate where reunification services or parental rights have been

¹ All statutory references are to the Welfare and Institutions Code unless otherwise specified. All rule references are to the California Rules of Court.

terminated with respect to a sibling or half sibling of the minor and the parent “has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling”].) Having carefully reviewed the record, however, we conclude that the juvenile court’s finding was amply supported by the evidence. We therefore deny the petition.

I. BACKGROUND

On July 14, 2015, the Contra Costa County Children & Family Services Bureau (Bureau) filed a dependency petition on behalf of newborn Kingston, alleging that mother had a serious and ongoing substance abuse problem that impaired her ability to care for the minor. Specifically, the petition stated that mother had admitted to methamphetamine use dating back to 2003; that, on May 9, 2015, she had tested positive for methamphetamines while being seen at the hospital due to complications with her pregnancy; and that she had previously failed to reunify with Kingston’s half-sibling, David M. (born June 2004), leading to the October 2006 termination of her parental rights with respect to David. In fact, at the time Kingston’s dependency petition was filed, none of mother’s five other sons remained in her care due to her decade-long struggle with substance abuse and her repeated involvement with the child welfare system.²

Mother had her first child, A.A. (born September 2000), with Saul A. the same year that she graduated from high school. Their relationship ended when A.A. was 15 months old, due to Saul’s infidelity. In 2002, mother met David M. (Mr. M.). They started “partying” together and he introduced mother to drugs, including ecstasy. In 2005, mother gave birth to her second son, also David M. Six months later, mother’s relationship with the Mr. M. ended when he was sentenced to 14 years in prison for attempted murder. Mother and her two sons became homeless, living from place to place. When David was 19 months old and the family was residing with the maternal

² Mother also has a significant criminal history, with 12 arrests from 2001 through 2014, including arrests for forgery, burglary, credit card fraud, and various drug-related offenses.

grandfather, the minor ingested methadone and cocaine, went into full respiratory distress, and stopped breathing. As a result, Alameda County filed a dependency action, and David and A.A. were both removed from mother's care. Through these proceedings, Saul A. was given full custody of A.A. Although mother was offered reunification services with respect to David—including substance abuse treatment, drug testing, parenting classes, and counseling—she did not make any efforts or progress towards reunification. Thus, her parental rights were terminated with respect to David in October 2006.

Mother was using methamphetamine at this time, reportedly to numb the pain she was experiencing from losing her children as well as David's father. In 2006, she met Allen H. (Mr. H.) in a drug house while getting high. About a year later, after learning she was pregnant with her third child, mother entered a residential treatment program. She failed to complete this program, however, and resumed her drug usage. Mother's third son, also Allen H., tested positive for methamphetamine at his birth in July 2007. Mother admitted that she had used methamphetamine for two weeks prior to Allen's birth and that she did not have regular prenatal care. Alameda County thus filed a dependency action for Allen and offered mother reunification services. Eventually, Allen was returned to mother under a family maintenance plan.

In May 2008, however, mother's whereabouts became unknown after she left a transitional living program with Allen. Mother told Alameda County that Mr. H. had just been released from prison and that she was going to live with him in Contra Costa County. Unfortunately, the address she reported turned out to be a crack house, and neither mother nor Allen could be located. Unable to find the minor, Alameda County issued a protective custody warrant for Allen. The minor was subsequently located and detained a second time in December 2008, and mother re-entered treatment. Alameda County—adding the additional allegation that mother had not been providing appropriate medical care for Allen—recommended that no further services be offered to mother at this point. Alameda County also recommended that no reunification services be offered to Mr. H., as he had failed to reunify with all eight of Allen's half-siblings.

While these proceedings were pending, mother gave birth to J.H. in April 2009. The minor tested positive for methamphetamine at birth, and mother reportedly received no prenatal care during her pregnancy. Alameda County detained J.H. and, ultimately, mother was offered family reunification services with respect to both J.H. and Allen. After successfully completing her reunification plan as well as a period of family maintenance services, dependency proceedings with respect to the two boys were dismissed in March 2011.

In March 2012, mother gave birth to her fifth son, John S. She reported being happy in her relationship with the boy's father, also John S. (Mr. S.), but eventually their relationship ended because he was constantly in and out of jail. Mother remained clean and sober during this period and was able to attend and graduate from community college. Unfortunately, after four years of sobriety, mother lost her housing after a dispute with her landlord, and the family became homeless. The stress caused by her unstable living situation reportedly led mother to relapse, and she began using methamphetamine again.

In October 2014, Allen and J.H. were detained after they were found in the care of an alleged uncle. According to the responding police officer, there were no beds, clothing, or food in the home, and the boys reported being hit with a belt by the uncle. Moreover, Allen and J.H. were filthy, wearing soiled clothing that reeked of urine. They stated that they had been in the uncle's care for an extensive period of time and could not remember when they had last seen their mother. When mother did appear at the police station later that day, she was under the influence and was arrested. As a result, the boys again became juvenile court dependants. Mother subsequently acknowledged that she was "heavily caught up in her addiction" during this period. She was not offered services in the case due to her previous failure to reunify with David, and a permanency planning hearing for both boys was scheduled for July 31, 2015.

After a casual encounter with Kenneth E., mother became pregnant for the sixth time. Mother acknowledged that she knew she was pregnant within one month, but she continued to use drugs until she was hospitalized in May 2015 due to placenta previa.

She tested positive for methamphetamines at this time and further reported being homeless and without baby supplies. Mother was again hospitalized around June 10, 2015, for the last month of her pregnancy, and gave birth to Kingston in July 2015. Although the minor did not test positive for drugs at birth, a doctor's report indicated that he had clearly been drug exposed, given the arching of his body, his bad reflex, and acne.

When contacted by a Bureau social worker due to Kingston's drug-involvement, mother indicated that she did not know the whereabouts of her fifth child, John S. He reportedly had been staying with Mr. S, who had recently been arrested and incarcerated. The last known addresses that mother provided to the Bureau included a nonexistent address and an abandoned house. Thereafter, the Bureau located John, who had been safely in the care of his paternal grandparents for two years.

With respect to Kingston, the Bureau filed a dependency petition on July 14, 2015, as described above. He was formally detained in foster care at the detention hearing the next day. In the meantime, mother made arrangements to enter a residential treatment program while in the hospital, which she did upon discharge on July 16, 2015. After a month in the program, mother was reported to be doing well and meeting all program requirements. She was also having weekly visits with Kingston, which were reportedly going well. With respect to her addiction mother stated : “ ‘This time recovery is different for me because I finally get it and I am ready for a positive change.’ ”

At the combined jurisdiction and disposition hearing on August 28, 2015, mother first submitted to jurisdiction, the juvenile court determined that the allegations in the petition were true, and the court found Kingston to be a child described by subdivisions (b) and (j) of section 300. Mother then contested the Bureau's recommendation that she not receive reunification services, testifying regarding her progress in her current treatment program. The juvenile court, however, adopted the recommendations of the Bureau, bypassing mother for reunification services. In reaching this decision, the court stated: “Well, I am encouraged that mother is taking steps now to straighten out her life, but the history is overwhelming.” The matter was therefore set for a hearing on

December 21, 2015, so that a permanent plan for out-of-home care could be established for Kingston pursuant to section 366.26.

Mother subsequently filed a timely notice of her intent to file a writ petition, and the petition itself was filed on October 1, 2015. (Rules 8.450(e), 8.452.)

II. DENIAL OF REUNIFICATION SERVICES

A. *Statutory Framework and Standard of Review*

As a general rule, when a child is removed from parental custody under the dependency laws, the juvenile court is required to provide reunification services to “the child and the child’s mother and statutorily presumed father” (§ 361.5, subd. (a).) The purpose of reunification efforts is to “eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible.” (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 (*Baby Boy H.*)). However, it is also the “intent of the Legislature, especially with regard to young children, . . . that the dependency process proceed with deliberate speed and without undue delay.” (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1151.) Thus, the statutory scheme recognizes that there are cases in which the delay attributable to the provision of reunification services would be more detrimental to the minor than discounting the competing policy of family preservation. (See *Ibid.*) Specifically, section 361.5, subdivision (b), exempts from reunification services “those parents who are unlikely to benefit” from such services or for whom reunification efforts are likely to be “fruitless.” (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 474; *Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478.) Once the juvenile court concludes reunification efforts should not be made, it “‘fast-tracks’” the dependent minor to permanency planning so that a permanent out-of-home placement can be developed. (*In re Rebecca H.* (1991) 227 Cal.App.3d 825, 838.)

The statutory sections authorizing denial of reunification services are sometimes referred to as “bypass” provisions. (*Melissa R. v. Superior Court* (2012) 207 Cal.App.4th 816, 821.) In the present case, the juvenile court denied reunification services to mother based on three such bypass provisions, subdivisions (b)(10), (b)(11), and (b)(13) of

section 361.5. Since only one valid ground is necessary to uphold the juvenile court's bypass decision, we will focus here on subdivision (b)(11), under which reunification services need not be provided if the court finds by clear and convincing evidence that "the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, . . . and . . . , according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent." (§ 361.5, subd. (b)(11).) This statute "recognizes the problem of recidivism by the parent despite reunification efforts." (*Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478.)

With respect to the second prong of the subdivision (b)(11) requirements for bypass, "[t]he 'reasonable effort to treat' standard 'is not synonymous with 'cure.' ' " (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.) Instead, it "focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' " (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*)) However, "[w]e do not read the 'reasonable effort' language in the bypass provisions to mean that *any* effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent's efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent's progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made." (*Ibid.*)

We review an order denying reunification services under subdivision (b) of section 361.5 for substantial evidence. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96 (*Cheryl P.*.) Under such circumstances, we do not make credibility determinations or reweigh the evidence. (*A.A. v. Superior Court* (2012) 209 Cal.App.4th 237, 242.) Rather, we "review the entire record in the light most favorable to the trial court's

findings to determine if there is substantial evidence in the record to support those findings.” (*Ibid.*)

B. *Evidence Supporting Bypass*

Here, David M. was removed from mother in December 2005 after the minor ingested methadone and cocaine, went into full respiratory distress, and stopped breathing while staying in the home of the maternal grandfather. In addition to allegations regarding mother’s inability to adequately supervise and protect the minor, David’s dependency petition also alleged that mother had previously been arrested for drug possession and that David was behind in his immunizations. Reunification services offered to mother in David’s case included substance abuse treatment, drug testing, parenting classes, and counseling. Presumably, then, the problems identified in David’s dependency that led to the removal of the minor from her care included substance abuse and poor parenting practices.

Under such circumstances, in order to support the conclusion that bypass of reunification services was appropriate in Kingston’s case pursuant to subdivision (b)(11), the juvenile court was required to find that, since December 2005 when David was removed, mother had not made a “reasonable effort” to treat her substance abuse problem and improve her parenting skills. (See 361.5, subd. (b)(11) [bypass appropriate only when parent has not made a reasonable effort to treat the problems which led to the removal of the sibling or half-sibling]; *Cheryl P.*, *supra*, 139 Cal.App.4th at p. 98 [statutory language “ ‘has not *subsequently* made a reasonable effort to treat the problems’ [citation] refers to reasonable efforts made since the removal of the sibling”]; but see *In re Harmony B.* (2005) 125 Cal.App.4th 831, 842-843 [seemingly confusing “no reasonable effort” standard with standard for terminating reunification services].) We conclude that substantial evidence exists in the record to support this finding.³

³ With respect to the record in this case, we note that the Bureau filed a motion on August 27, 2015, asking the juvenile court to take judicial notice of the “petitions and orders” previously filed in the dependency actions of David, Allen, and J.H. Certified copies of the relevant petition and orders with respect to David were attached to the

Mother has admitted to using methamphetamine since 2003. After David was removed in 2005, she reportedly made no effort to comply with the reunification plan that was developed for her, leading to the October 2006 termination of her parental rights with respect to David. The record reflects that mother was heavily involved in a drug lifestyle during this time, meeting Mr. H. at a drug house while getting high. Moreover, although mother entered a residential treatment program after learning she was pregnant with her third child, she failed to complete the program and Allan tested positive for methamphetamine at his birth in July 2007. Mother was given reunification services with respect to Allen and he was eventually returned to her under a family maintenance plan. Presumably she had some period of sobriety during this time. Unfortunately, less than a year after Allen's birth, mother absconded with the minor, and his whereabouts were unknown for over six months. When Allen was located and re-detained, mother again

request for judicial notice. The dispositional report also asked the juvenile court to take judicial notice of the "dependency" of Allen and J.H., as well as the "dependency" of David. At the dispositional hearing on August 28, 2015, the juvenile court indicated that it had Allen's file before it, as well as the documents regarding David that were part of the current court file. Our record, however, does not contain the dependency files of any of Kingston's half-siblings. Moreover, while the petition and orders from a prior dependency are useful in establishing the first prong of the bypass test under either subdivision (b)(10) or (b)(11) of section 361.5, they provide little evidence with respect to the second prong of that test, under which the child welfare agency has the burden of establishing that the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling." (§ 361.5, subs. (b)(10) & (b)(11).)

Although not crucial to our outcome here, we strongly suggest that relevant court reports from prior sibling cases be attached to a dispositional report recommending bypass, along with the petition and related orders, and that the report, itself, contain a detailed analysis of the parent's activities over the relevant timeframe which support a "no reasonable efforts" finding. Not only would this aid our appellate review, but it would also help focus the juvenile court on the issue before it by pulling together in one place all of the information relevant to what is often a long and complicated history. (Compare *In re D.H.* (2014) 230 Cal.App.4th 807, 815-817 [finding record regarding the problems that led to removal in the sibling case was insufficient to determine applicability of subdivision (b)(10) and (b)(11) where no case plan or reports from previous dependency were included].)

entered treatment. Apparently, this attempt at treatment also proved ineffective, however, as J.H. tested positive for methamphetamine at his birth in April 2009.

Thereafter, mother was offered and successfully completed family reunification services with respect to both J.H. and Allen, ushering in a four-year period of sobriety. Regrettably, though, after losing her housing in 2014, she again turned to methamphetamines. This was not a short relapse, but was instead a significant return to a drug-addicted lifestyle. As a result, Allen and J.H. were grossly neglected, mother relinquished custody of John and became unaware of his whereabouts, and she continued to use drugs while pregnant with Kingston. Indeed, the only reason that Kingston did not test positive for drugs at birth was because mother was hospitalized for the month before he was born due to complications with her pregnancy. By allowing her to become sober in a hospital setting, however, mother's health issues actually gave her a chance to see the value in seeking further residential treatment. Recognizing the opportunity that had been presented to her, mother successfully engaged in a 90-day residential program. Whether this program will be sufficient to allow mother to turn the corner on years of substance abuse and concomitant neglectful parenting remains to be seen.

Thus, the record in this case reflects a lengthy history of substantial addiction during which, admittedly, mother was able to maintain her sobriety on one occasion for a significant period of time. The record additionally contains, however, the Bureau's expert opinion that mother had not made a reasonable effort to treat the problems leading to David's removal. In particular, the Bureau highlighted the fact that mother most recently continued to use drugs while pregnant with Kingston, despite the fact that she knew she was pregnant and the potential harm it could do to her unborn child. Thus, in the opinion of the Bureau social worker, mother, in line with her previous history, "continues to make decisions which negatively impact her and her children." And, although the Bureau acknowledged and encouraged mother's very recent efforts to treat her long-standing substance abuse problem, it did not find this circumstance sufficient to establish a reasonable effort to treat, given that mother remained in "the very early stages

of her sobriety.” (See *R.T.*, *supra*, 202 Cal.App.4th at p. 915 [juvenile court can properly conclude that a recent substantiated effort to treat “was simply too little, too late”].)

In sum, mother’s history as to both the quality and quantity of her efforts over time, as well as her lack of progress and success despite her extensive involvement with the child welfare system in dependency actions involving multiple minors, provides substantial evidence to support the conclusion that she has not, at this point, made a reasonable effort to address her entrenched substance abuse and parenting issues.

III. DISPOSITION

The petition is denied on the merits. (See § 366.26, subd. (1)(1)(C), (4)(B).) Because the permanency planning hearing in these matters is set for December 21, 2015, this opinion is final as to this court immediately. (Rules 8.452(i), 8.490(b)(2)(A).)

REARDON, ACTING P. J.

We concur:

RIVERA, J.

STREETER, J.