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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

J.E., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY CHLDREN
AND FAMILY SERVICES BUREAU,

Real Party in Interest.

A147268

(Contra Costa County
Super. Ct. Nos. J15-00824 & J15-
00825)

MEMORANDUM OPINION¹

Two children (the twins) of petitioners J.E. (Father) and H.E. (Mother) were the subject of dependency petitions filed on July 28, 2015, within a week of their birth. The petitions alleged the twins were at risk of substantial physical harm because Mother and Father were drug users and an older brother of the twins suffered physical injuries “indicative of abuse and/or neglect” while in the parents’ care. (Welf. & Inst. Code,²

¹ We resolve this case by a memorandum opinion pursuant to California Standards of Judicial Administration, section 8.1(1), (3). We have not recounted the entire factual background of this case. That background is summarized in the “Opposition to Extraordinary Writ,” filed by the Contra Costa County Children and Family Services Bureau (Agency).

² All statutory references are to the Welfare and Institutions Code.

§ 300, subs. (b), (j).) Following a contested hearing, the juvenile court sustained the jurisdictional allegations. After a subsequent dispositional hearing, the court bypassed reunification services as to both parents under section 361.5, citing subdivision (b)(10) as to Father and subdivisions (b)(10) and (13) as to Mother, and scheduled a permanency planning hearing under section 366.26.

The juvenile court's bypass of reunification services under section 361.5, subdivision (b)(10) was based on a parallel dependency proceeding in Sacramento County Superior Court, involving two older siblings of the twins. The older siblings were detained on an allegation of the parents' failure to protect, which was based on injuries indicative of abuse one of the children had suffered while in Mother's care. After neither parent participated in the reunification process in the Sacramento proceeding, reunification services were terminated at the six-month review hearing.

On February 8 and 9, 2016, Father and Mother, respectively, filed petitions for an extraordinary writ in this court, seeking orders directing the juvenile court to vacate its order bypassing reunification services and scheduling a section 366.26 hearing.

The purpose of reunification services is to place the parent in a position to gain custody of the child. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1244.) Parents normally must be provided reunification services prior to the scheduling of a section 366.26 hearing, but section 361.5, subdivision (b) contains 16 exceptions to this rule, referred to as "bypass provisions." (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1163.) We review a juvenile court's decision to bypass services under section 361.5, subdivision (b) for substantial evidence. (*G.L.*, at p. 1164.)

The provision cited by the court in bypassing services to both parents, section 361.5, subdivision (b)(10), permits the denial of reunification services when the court finds, by clear and convincing evidence, "That the court ordered termination of reunification services for any siblings . . . of the child because the parent or guardian failed to reunify with the sibling . . . after the sibling . . . had been removed from that parent or guardian pursuant to Section 361 and . . . that, according to the findings of the

court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling . . . from that parent or guardian.”

Section 361.5, subdivision (b)(10) “ ‘recognizes the problem of recidivism by the parent despite reunification efforts. Before this subdivision applies, the parent must have had at least one chance to reunify with a different child through the aid of governmental resources and fail to do so. Experience has shown that with certain parents . . . the risk of recidivism is a very real concern. Therefore, when another child of that same parent is adjudged a dependent child, it is not unreasonable to assume reunification efforts will be unsuccessful.’ ” (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744–745, superseded by statute on another ground as stated in *In re Angelique C.* (2003) 113 Cal.App.4th 509, 518–519.) The subdivision “contemplates a two-prong inquiry: (1) whether the parent previously failed to reunify with the child’s sibling . . . ; and (2) whether the parent ‘subsequently made a reasonable effort to treat the problems that led to [the] removal of the sibling’ ” (*In re B.H.* (2016) 243 Cal.App.4th 729, 736.) “ ‘We 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.’ ” (*In re D.H.* (2014) 230 Cal.App.4th 807, 816.)

Father contends the juvenile court’s order was not supported by substantial evidence because he made reasonable efforts to treat the problems that led to removal of the older siblings by entering “an in-patient substance abuse treatment program” four months prior to the dispositional hearing. The “treatment program” is a faith-based men’s residence that relies on “following God’s word” as a cure for substance abuse. The program is not approved by the Agency, and the head of the program is not a

licensed therapist. As part of the program, Father is required to spend one to two years residing in the home and “raising finance [*sic*] for the home and church.” During his time in the program, he had been prohibited from participating in the services arranged by the Agency, including outpatient drug treatment therapy and parenting classes.

The juvenile court was entitled to conclude that this program, whatever its merit, did not constitute a “reasonable effort” to “treat the problems that led to [the] removal of the sibling[s].” Those problems were not necessarily Father’s substance abuse, which he denied when interviewed by the Sacramento child welfare authorities. Rather, the older siblings were detained because Father failed to care for and protect them. At the time of their detention, Father was homeless and had apparently left them to the care of Mother. The program Father entered requires him to reside for at least one year, and possibly two, in a men’s residence, working for the organization. Not only does his residence in the home preclude him from involvement in the care and support of the twins, the program also bars his participation in parenting classes or other programs designed to address his failure to care and protect. Without questioning Father’s good faith in entering the program, its inadequacy in addressing the problems that led to the removal of the older siblings provided substantial evidence to support the juvenile court’s order bypassing services.

Mother contends she was not given sufficient time to demonstrate reasonable efforts, since the termination of reunification services in the Sacramento case occurred only one month before the juvenile court entered the order bypassing services in this proceeding. The juvenile court, however, was not required to wait any particular period of time before relying on section 361.5, subdivision (b)(10). (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 842–843 [court did not err in entering order bypassing services under § 361.5, subd. (b)(10) simultaneously with termination of services in sibling’s proceeding].) If a parent has not had sufficient time to demonstrate reasonable efforts since the termination of reunification services, the juvenile court must base its evaluation of reasonable efforts on the parent’s conduct in connection with the proceeding in which

services were terminated. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 97–98.)

Mother made no effort in connection with the older siblings' proceeding to address her parenting; as mentioned above, she did not participate in the reunification process. In connection with this proceeding, Mother entered a drug treatment program the day after services were terminated in the Sacramento proceeding, but she left that program the next day. At the dispositional hearing, she claimed to have entered another drug treatment program prior to the hearing, but she offered no proof. In any event, the removal of the older siblings in the Sacramento proceeding was based not on Mother's drug abuse, but on her neglect of the siblings and her physical abuse of one of them. For that reason, substantial evidence supported the juvenile court's conclusion that Mother's entering a drug treatment program at the last minute did not constitute reasonable efforts to address the problems that led to the older siblings' removal.

Because we uphold the trial court's bypass of services to Mother under section 361.5, subdivision (b)(10), we need not consider the sufficiency of the evidence to support bypass under subdivision (b)(13). (*In re T.G.* (2015) 242 Cal.App.4th 976, 986.)

The parents' petitions for an extraordinary writ are denied on the merits. (See *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) The decision is final in this court immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).)

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.