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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

A.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.

A148976

(Contra Costa County
Super. Ct. No. JI500657)

I.

INTRODUCTION

A.G. (mother) seeks review by extraordinary writ of a juvenile court order setting a hearing pursuant to Welfare and Institutions Code section 366.26,¹ to consider termination of parental rights, and to select a permanent plan for her year-old son, J.G. Mother contends the juvenile court erred by terminating her family reunification services at a combined 6-12 month status review hearing because: (1) the services that had been provided to her were not reasonable; and (2) there was a substantial probability that J.G.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

could be returned home within 18 months after his initial removal. We deny mother's petition on the merits.

II.

STATEMENT OF FACTS

A. The Dependency Petition and J.G.'s Detention

On June 12, 2015, the Contra Costa County Children and Family Services Bureau (the Bureau) filed a juvenile dependency petition alleging jurisdiction over four-month-old J.G. under section 300, subdivision (b), due to mother's willful or negligent failure to protect J.G. from a substantial risk of harm because of mental illness, developmental disability, or substance abuse.

The petition was supported by allegations that: (1) mother "became so intoxicated, from her use of alcohol, that she was found on the street, by law enforcement, barely able to hold onto [J.G.], barely able to answer simple questions and barely able to speak in simple sentences"; and (2) mother suffers from a "poly-substance abuse problem" that poses an "ongoing risk of serious harm and neglect."

In anticipation of a June 15, 2015 detention hearing, the Bureau submitted a report which provided pertinent background about the case. On June 10, the police took J.G. into protective custody after responding to a report of an intoxicated woman on the street holding an infant. Mother was found to be "really drunk," and unable to respond to simple questions. Her blood-alcohol content was .215 percent, which is almost three times the legal limit. J.G. was undressed because his diaper was soaked through and his clothes were wet. But, he looked healthy and showed no signs of abuse. Mother was arrested for felony child endangerment, taken to the hospital for detox, and then released before the social worker was able to make contact with her.

The day after the June 10, 2015 incident, the Bureau social worker went to look for mother at the home of the maternal grandmother (grandmother). From outside, the social worker heard a loud television, and she had to knock several times before grandmother partially opened her door. The social worker identified herself and asked about mother. Grandmother said she had not seen mother or J.G. that day, but she

offered to give mother a message when she saw her. Grandmother denied the social worker's request to come inside, stating she was just waking up and that she would call the social worker later. The social worker suspected grandmother was under the influence of something.

On the afternoon of June 11, 2015, grandmother brought mother to the Bureau to meet with the social worker. Mother offered this explanation of the June 10 incident: Mother and J.G. had been staying at the home of mother's cousin, but a conflict arose after mother said the cousin's children were a bad influence on mother's teenage son, Jo.G. Mother felt she had very little authority over Jo.G. because he had been removed from her care and placed in the custody of grandmother. Mother told the social worker that Jo.G became upset by her comment, and said he hated mother and her family, so mother called a male friend who gave her and J.G. a ride to a hotel. At the hotel, mother got into a dispute about the condition of her room and called her friend for help. The hotel manager made mother leave, so she took J.G. to a bus stop to wait while her friend ran an errand. That was the last thing mother could recall happening before she woke up in the hospital.

Mother admitted to the social worker that after the altercation at the hotel, she purchased and drank a pint of vodka. She acknowledged this was a mistake, but offered this defense: "I had purchased water also and I was contemplating just drinking water. But I was so angry by what had occurred at the hotel. When I get angry, I say 'forget it' I will just drink alcohol. I take Topamax for Post Traumatic Stress Disorder [PTSD] and depression. If I had my correct medication, I would have not drunk the alcohol." During her June 11 interview, mother denied current drug use but admitted that she had an alcohol relapse over Memorial Day weekend. She reported that she suffers from PTSD, and postpartum depression, and that her family does not support or understand her.

The Bureau reported that mother had been receiving alcohol and other drug (AOD) services from the county since January 2015, when the Bureau received a prior referral about mother's drug and alcohol use. About a month before J.G. was born, mother had tested positive for amphetamine, "eda," and marijuana. Mother claimed that

she unknowingly digested a “weed brownie” at a holiday party. She also claimed that she stopped drinking alcohol once she discovered she was pregnant, although she admitted that she used to drink a half pint to a pint of vodka a day. After her positive drug test, mother began working with a substance abuse counselor, and attending group meetings and AA meetings.

Maryanne Harden is a counselor at AOD services who has worked with mother. Harden reported that mother was doing well prior to her relapse, but that she had not attended her group meetings for a couple of weeks. Harden opined that mother could benefit from a structured in-patient treatment program, and reported that she was trying to secure a placement for mother.

Mother did not appear at the June 15 detention hearing. Grandmother appeared with her son and told the court that she had intended to bring mother to the hearing but mother had not been able to “behave herself” that day. Grandmother said that mother had attacked her and her son and the police had to be called to escort her out of the home. The court ordered that counsel be appointed for mother and then detained J.G., observing that he was a fragile infant, and that mother had become very intoxicated notwithstanding the fact that she had been receiving services to assist her with mental health and substance abuse problems for several months.

B. Jurisdiction

Mother did not appear at the jurisdiction hearing on June 25, 2015. Since the detention hearing, mother had been hospitalized again and then discharged to Nierika House, a “dual diagnosis facility” in Concord where she was subject to a 30-day blackout period which precluded her from leaving the facility. The court ordered that mother was to receive supervised visitation if authorized by her program, and continued the jurisdiction hearing.

Mother did not appear at the continued jurisdiction hearing on July 20, 2015. Since the last hearing, she had left her program, failed to engage in any treatment, and been “5150’d” for some unspecified behavior in Manteca. Mother’s counsel advised the court that mother requested a continuance on the ground that she had not been able to

arrange transportation. After that request was denied, mother's counsel requested a contest.

Mother did not appear at the contested jurisdiction hearing on August 6, 2015. The court denied a request for another continuance, stating that it seemed "rather apparent" that mother was "opting not to participate in these proceedings." Mother's counsel disagreed, stating that mother was staying in Sacramento and had not been able to get to court. The court responded that six weeks had passed since detention, that "[w]e need to move this case forward," and that it was not in the interest of the child to delay further the proceedings.

At the August 6 hearing, the court sustained the petition allegations, exercised jurisdiction over J.G., and continued the matter for disposition. The court urged the Bureau to be prepared to proceed to disposition even if mother continued to absent herself from the process. County counsel responded that the Bureau had limited information because mother had moved to Stockton, then to Sacramento where she went into a program, then left that program and did not maintain contact with the Bureau. Hoping to encourage mother's participation, the court ordered the Bureau to offer mother weekly supervised visitation if she presented herself to the Bureau.

C. Disposition

1. The Disposition Report

In anticipation of a September 17, 2015 disposition hearing, the Bureau filed a report recommending that J.G. be adjudged a dependent, that reunification services not be provided to mother, and that the case be set for a section 366.26 hearing.

The recommendation to deny mother services was made pursuant to section 361.5, subdivision (b)(10), on the ground that mother failed to reunify with her older son Jo.G. and that she had not subsequently made a reasonable effort to treat the problems that led

to the removal of Jo.G. from her care.² The Bureau underscored that mother had significant chronic substance abuse problems, as well as mental health issues, that she had not been able to stabilize her life or housing, and that there was no indication that mother was amenable to services.

According to the disposition report, mother has an extensive criminal history from 2001 through 2014, which includes convictions for felony assault with a deadly weapon in 2007 and 2010; misdemeanor theft in 2010; and misdemeanor battery of a peace officer in 2014. Mother also has significant chronic substance abuse problems, including alcoholism, as well as mental health problems, some of which are the result of past trauma.

The Bureau reported that mother had been arrested and placed on section 5150 holds several times since the detention hearing. On June 30, 2015, mother went to a gas station in Sacramento and attempted to “pray over” the people she found there. If they would not let her pray over them, she punched them. When the police arrived, mother talked about dead bodies in the trunk of a car, made other bizarre statements, and claimed that she had been recently gang raped. She tested positive for methamphetamine and was transferred to a mental health facility. While mother was hospitalized the social worker spoke with her by telephone. Mother said she went to Sacramento to stabilize her situation and to get away from grandmother. Mother claimed that grandmother and mother’s brother had physically assaulted her. She said that grandmother tries to sabotage everything she does and that she does not want grandmother to have anything to do with J.G.

On July 14, 2015, mother was released from the Sacramento hospital. Later that month, the social worker was contacted by a staff member at WEAVE, a domestic

² Jo.G.’s case was open from November 2002 through August 2007. Mother’s services were terminated in May 2003. Jo.G. was placed with grandmother, but then removed from her home pursuant to a supplemental petition due to grandmother’s chronic alcohol problems. Jo.G. was subsequently returned to grandmother’s care over the Bureau’s objection.

violence service program in Sacramento. The program was offering services to mother, but they were unsure if she would benefit from services in light of her mental health issues.

In August 2015, mother was placed on a section 5150 hold and transported to a mental health facility in Woodland. She subsequently reported that she had been staying with a relative in Sacramento and attending the WEAVE program until grandmother showed up with mother's boyfriend. According to mother, there was an argument and then mother and her boyfriend went to a hotel where several men attacked mother, beat her up, and stole her belongings. After wandering the streets for hours looking for food, mother called the police, who came and transported her to the hospital psychiatric ward.

In September 2015, grandmother told the Bureau social worker that mother had been released from the Woodland hospital earlier that month, but was subsequently arrested for assaulting a police officer. Grandmother denied that she assaulted mother while mother was living in Sacramento. Grandmother was requesting visitation with J.G. for herself and Jo.G. The Bureau recommended that visitation be very limited in light of mother's strained relationship with her family. Mother had not yet presented herself to the Bureau for visitation, but there had been one supervised phone call between her and J.G.

2. The Disposition Hearing

Mother did not appear at the September 17, 2015, disposition hearing. Mother's counsel requested a contest and the case was continued for that purpose. On October 15, 2015, mother made her first appearance in this case at the contested disposition hearing. Mother's counsel examined Nadine Hendricks, the social worker who was assigned to mother's case when J.G. was originally detained.

Hendricks testified that she had one in-person meeting and several phone conversations with mother during which she discussed services that were available to assist mother with reunification. Hendricks was focused on getting mother into a program; the first step was detoxification and then long-term residential care with a mental health component. Referrals were made to programs in the county and also in

Sacramento where mother had gone to stay for period of time. Mother was currently in a detoxification facility in Concord. She had been in the program for a few weeks and the plan was for her to transition into residential treatment, but she had to be “clean” for 60 days before that could happen.

Hendricks testified that mother had only one visit with J.G., which took place a week before the contested hearing. When asked why visits did not start earlier, Hendricks testified that mother had not been stable until recently, explaining: “This is the first time that she’d actually come back into Contra Costa and got into a program or a stable place where visitation could even start. I had not even had a chance to meet her up until that point.” The Bureau believed that residential treatment was an essential first step for mother before any other type of mental health services could be provided. According to Hendricks, mother had quite a few mental health problems, but when she was stabilized on her medication, she was “pretty coherent and seemed to be doing fairly well, at least for a period.”

As noted, the Bureau recommended that the court deny reunification services to mother on the ground that she had failed to reunify with Jo.G. However, the court rejected that recommendation based on evidence that mother had been incarcerated at the California Youth Authority during most of Jo.G.’s dependency case. Thus, after the court made a determination that J.G. was a juvenile court dependent, the matter was continued for preparation of a case plan.

On October 26, 2015, the court held a hearing to review mother’s case plan, which mother did not attend. There were three primary components of the plan in addition to visitation: counseling/mental health services; education services; and substance abuse services. The Bureau was responsible for providing mother with referrals to these services; assisting mother in accessing services as appropriate to her needs; and working with mother to determine her ongoing needs. The juvenile court approved mother’s case plan after the parties all agreed it was appropriate.

D. Status Review

1. The Six-Month Review Report

A status review hearing was set for May 9, 2015. The Bureau recommended that the court terminate services to mother and set the matter for a section 366.26 permanency hearing. The Bureau reported that mother had not addressed any issue in her case plan.

During this reporting period, social worker Sandra Hamilton had one face-to-face meeting with mother, but mother resisted discussing her case plan. Instead, she talked about her sexual traumas and her need for a home, and she asked if the Bureau had any ladies underwear that she could use. When Hamilton attempted to focus the conversation on J.G., mother left the meeting. The only other contact with mother was a phone conversation when mother said she “was at Walgreens waiting for her CD to be released,” and then hung up the phone.

At the May 9 review hearing, mother’s counsel objected to the recommendation to terminate mother’s services and requested a contested hearing. The court received the May 2015 status report into evidence and requested that the social worker prepare a supplemental memorandum providing additional information about the “services offered to mother and attempts to communicate with her.”

2. The Supplemental Report

The supplemental memorandum was prepared by Sandra Hamilton, who reported that she was assigned to mother’s case in October 2015. Hamilton reported that the Bureau offered mother weekly one-hour supervised visits at the Bureau and provided her with a printed schedule of the dates and times for those visits. From September 11 through November 18, 2015, mother attended seven visits. On one occasion, the social worker had to ask mother to stop using her cell phone. Mother was 45 minutes late for another visit, explaining that she had been in the hospital. During this period, she completely missed two scheduled visits without canceling them.

Hamilton reported that shortly after this case was transferred to her, arrangements were made for her to have a meeting with mother on November 4, 2015, after a

supervised visit. However, mother left the building before Hamilton arrived, did not answer her phone, and did not return Hamilton's voice mail message.

On November 13, 2015, Hamilton met with mother after her supervised visit with J.G. During the 30-minute meeting, mother seemed disoriented at times. She asked for bus and BART tickets and reported she was homeless. Hamilton provided the tickets and also gave mother a backpack and blanket. She provided mother with a list of shelters and referrals to drug testing and parent education classes. Mother said she did not think she could attend classes because she was busy. Hamilton reminded her that the court had ordered these services and it was important for mother to work on her case plan.

Following her initial meeting with mother, Hamilton attempted to call mother at the only phone number mother had provided. Hamilton received a message that the number was not in service.

On November 18, 2015, Hamilton had another conversation with mother after a supervised visit. Hamilton's intention was to review mother's case plan with her, and identify other needs or barriers she was experiencing relating to her complying with the Bureau's recommendations. However, the conversation was brief because mother said her ride was waiting for her. When Hamilton asked about mother's phone service she responded that she could not afford a phone anymore. Hamilton advised mother that she needed to keep in touch but mother said she did not have a contact number to offer.

The Bureau lost contact with mother after November 18, 2015. Hamilton periodically called mother's last known number but was unable to reach her. In December 2015, Hamilton called several psychiatric hospitals, and filed a request for a current due diligence report, but she was unable to find any possible leads about where mother had gone. On December 22, grandmother reported that she heard mother might be in jail, but she did not have any information about how to contact mother. Hamilton called grandmother several times in January and February 2016, but grandmother did not answer her phone or return Hamilton's messages.

On May 25, 2016, Hamilton was notified by the Los Angeles County Sheriff's Department that mother had been arrested and placed on a hold in a facility in Lynwood.

The Bureau subsequently learned that mother had been charged with felony assault with a deadly weapon and transferred to Patton State Hospital where they were attempting to stabilize her in order to determine if she was competent to stand trial.

3. The Combined 6-12 Month Review

The contested review hearing was scheduled to begin on June 1, 2016. At the hearing, the court accepted the Bureau's supplemental memorandum. It then advised the parties that mother's case would be referred to Legal Aid for appointment of a guardian ad litem in light of information that mother was in jail in Southern California and that her competency to stand trial was in issue. Before continuing the matter, the court requested that mother's counsel make arrangements so mother could participate in the contested review hearing via teleconference.

The contested review hearing was held on June 30, 2016. Mother was represented by her counsel and guardian ad litem, but authorities in Southern California refused to allow her to participate via teleconference. The parties stipulated that the court was conducting a combined 6-12 month review.

County counsel informed the court that it appeared that mother may have been incarcerated since as early as December 2015, and that she was charged with three counts of felony assault with a deadly weapon. Mother's counsel advised the court that she had been in contact with mother, that mother still wanted to reunify, and that mother was requesting an additional period of reunification services. In support of that request, mother's counsel submitted evidence that mother had completed 10 hours of substance abuse sessions while in jail, and that she had also enrolled in a school program.

At the conclusion of the hearing, the court denied mother's request for additional services and adopted the Bureau's recommendation to set a section 366.26 hearing, reasoning as follows:

“[M]other has such a significant mental health history, and history of violence, and it has now been a year since this child has been removed, so really in looking at the findings the Court would have to make to extend services to the 18-month mark, is there a substantial probability that the child will be returned within six months? I don't believe

there is such a probability. [¶] In fact, I think it's clear that even if mother were not incarcerated because of violence, it would take a long while for mom to deal with some pretty profound mental health issues that have plagued her for a long time, and I'm very sympathetic to mom. [¶] I'm pleased that she has taken advantage of some services while detained, however, given the child's age, the fact this child has spent virtually his entire life in foster care, I believe it is time to move forward, and it is appropriate to terminate services as mother had seven visits, I believe, during the course of that time when she was not confined and the quality of those visits were not good at all, so I will follow the recommended findings of the Department and terminate services to mother and set this matter for a Two-Six Hearing in light of the history of this case, and as well as mother's history of mental health.”

III.

DISCUSSION

A. Issues Presented and Standard of Review

Mother contends that the juvenile court erroneously denied her request for an additional period of reunification services. Because J.G. could not be safely returned to mother at the 12-month review, the juvenile court had discretion to extend the reunification period to the 18-month deadline only it found that: (1) reasonable services had not been provided; or (2) there was a substantial probability that J.G. would be returned to the physical custody of mother and “safely maintained in the home within the extended period of time.” (§ 366.21, subd. (g)(1).) Mother argues that both of these circumstances were established in her case.

“We review an order terminating reunification services to determine if it is supported by substantial evidence. [Citation.] In making this determination, we review the record in the light most favorable to the court's determinations and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.’ [Citation.]” (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689.)

B. Reasonable Services Were Provided To Mother

During proceedings in the juvenile court, mother never questioned the adequacy of her case plan or argued that she had not been afforded reasonable services. Thus, we question whether she can properly raise this issue for the first time on appeal. (See *In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) Even if the issue has not been waived, mother's claim that she was not afforded reasonable services lacks merits.

“ ‘[T]he focus of reunification services is to remedy those problems which led to the removal of the children.’ [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect. [Citation.] ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ [Citation.]” (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598-599.)

In the present case, substantial evidence supports the juvenile court's finding that mother was afforded reasonable services. Mother's case plan was tailored to address the specific problems that led to J.G.'s dependency by offering mother mental health counseling and services, education services, and substance abuse services. Furthermore, the evidence summarized above demonstrates that the Bureau made reasonable efforts to assist mother in accessing the services that were available to her, but that mother consistently refused to accept assistance or engage in her service plan.

Mother contends that the services offered to her were inadequate because her mental illness was not the “focus” of her case plan. According to mother, controlling case law required the Bureau to make mother's mental illness the “starting point” of her reunification plan. (Citing *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 422 (*Patricia W.*))

First, J.G. was removed because of mother's chronic substance abuse and mental health problems, *both* of which led to dangerous and often criminal behavior. Mother's case plan was tailored to address all of these problems, but mother failed to engage in the services that were available to her.

Second, mother mistakenly relies on *Patricia W.*, *supra*, 244 Cal.App.4th 397, which addressed a very different situation. For example, in that case the mother began hearing voices for the first time in her life following the birth of her son. Initially she was diagnosed with postpartum depression but later she received a diagnosis of schizophrenia. (*Id.* at p. 402.) The mother's mental illness was the sole basis for removing her toddler from the home; she had trouble managing her medications, and the father appeared to be in denial about the seriousness of her condition. (*Id.* at pp. 402-403.) Under those circumstances, a reunification plan that was not tailored to address the mother's mental illness was deemed inadequate. (*Id.* at pp. 420-424.) In this case, by contrast, mother's mental illness was one of several problems that led to the dependency, and her case plan was tailored to address all of those problems.

2. No Substantial Probability J.G. Could Be Returned to Mother

When a dependent child cannot be returned home at the 12-month review despite the fact that reasonable reunification services have been provided or offered, if the court finds "that there is no substantial probability of return to the parent within 18 months of the original removal order, the court *must* terminate reunification efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan. [Citation.]" (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249, italics added.)

In order to find that there is a substantial probability that a dependent child will be returned to the physical custody of a parent and safely maintained within the home within the extended period, the court must find the following: "(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child. [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent or legal guardian has

demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1).)

None of these circumstances apply to mother who failed to: (1) maintain regular contact with J.G.; (2) make any progress on her case plan; (3) demonstrate the capacity to meet the objectives of her treatment plan. Also, she was not capable of providing for J.G.'s safety, protection or well-being. Arguing otherwise, mother relies on evidence that she engaged in some services while she was incarcerated in Southern California. These efforts were too little and too late to undermine the court's finding that there is no substantial probability that mother will reunify with J.G. before the 18-month deadline.

Mother contends that the juvenile court erred by “speculating” that mother would not be able to reunify within the 18-month time frame. We disagree. The court's finding was supported by concrete evidence including the Bureau reports and hearing testimony from the social workers. Mother also contends that the juvenile court's ruling contradicts the legislative intent of the dependency scheme which focuses on preservation of the family. However, she ignores that the “focus shall be on the preservation of the family *as well as* the safety, protection, and physical and emotional well-being of the child.” (§ 300.2, italics added.) Here, mother has failed to demonstrate that she has the capacity to provide for the safety, protection, and physical and emotional well-being of her young son who has spent virtually his entire life in foster care.

IV.

DISPOSITION

The petition for extraordinary relief filed by mother is denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

RUVOLO, P. J.

We concur:

REARDON, J.

STREETER, J.