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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re L.D. et al., Persons Coming Under the
Juvenile Court Law.

B237124

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. CK35692)

Plaintiff and Respondent,

v.

A.F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Referee. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel, for Plaintiff and Respondent.

* * * * *

During A.F.'s (mother's) long history with children in the dependency system, she received almost \$15,000 in housing assistance and received reunification services on-and-off since 1997. Yet, mother demonstrates no ability to care for her youngest seven children – L.D., Le.R., Ni.R., I.R., El.R., Em.R., and J.R. (collectively children) – who suffered from a multitude of ailments as a result of mother's neglect.¹

This appeal is from the denial of mother's reunification services as to L.D., I.R., El.R., Em.R., and J.R.² We find no error and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

We summarize only those facts germane to the instant appeal.

L.D., Le.R., and Ni.R., along with their older sister Na.R., became dependents in 2004, as a result of mother's substance abuse and inability to care for them. They were initially returned to mother's custody, but then Na.R. was removed from mother's care when she acted out sexually. Jurisdiction over Na.R. had not terminated prior to Na.R.'s removal from mother's custody. Mother failed to reunify with Na.R. Mother did not appear at the hearing on terminating her reunification services over Na.R.

The Los Angeles County Department of Children and Family Services (DCFS) filed a petition in 2010 and two amended petitions in 2010 and 2011 naming the children as dependents. As subsequently sustained, the petitions alleged: (1) mother failed to obtain immediate medical care for L.D. when his head was bleeding; (2) mother has a history of substance abuse and currently abuses methamphetamine and alcohol; (3) mother allowed L.D., Le.R., and Ni.R. to cross a busy intersection without

¹ L.D. was born in February 1999, Le.R. was born in November 2000, Ni.R. was born in May 2002, I.R. was born in August 2007, El.R. was born in November 2008, J.R. and Em.R. were born in March 2010. Mother has three other children, Na.R., with whom she failed to reunify, A.F. and T.F., who live with mother's parents.

² Mother did not appeal from the order denying reunification services to Le.R. and Ni.R. That order was not appealable because the court set a permanency planning hearing with respect to them at the same time as it denied reunification services. (*In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1256 [an order denying reunification services and setting a permanency planning hearing is not appealable].)

supervision; (4) mother failed to obtain medical treatment for Le.R., I.R., and El.R. who suffered from scabies and head lice; (5) mother failed to obtain medical treatment for El.R. who suffered from an upper respiratory infection and I.R. who suffered from an upper respiratory infection and a viral infection; (6) mother failed to obtain medical treatment for Em.R. and J.R. who suffered from bronchiolitis; and (7) mother failed to obtain treatment for Em.R. and J.R. who had diaper rashes and dried feces on their bodies and who were not current in their immunizations.

Notwithstanding mother's long history with children in the dependency system, she demonstrated no improvement in overcoming her substance abuse. Mother generally refused to report for random drug testing the juvenile court had ordered her to attend, and there was evidence that she used another person's urine when she submitted to the tests. Additionally, there was evidence that mother used her welfare assistance funds to purchase drugs, and was observed to be under the influence "on several occasions." A police report dated October 5, 2010, indicated that mother admitted using methamphetamine two weeks earlier. An unrelated child, who stayed with mother, observed men leave mother's room with what he believed to be narcotics and observed mother selling drugs.³ In 2011, mother's boyfriend testified that mother used heroin in the last three years.

In May 2011, mother told her landlord that she was planning to go purchase milk for the children. Mother did not return for four days. Mother did not arrange for anyone to supervise the children during her absence.

On July 28, 2011, DCFS recommended no reunification services for mother. At a hearing August 4, mother did not appear, but her counsel acknowledged that DCFS had requested no reunification services. DCFS's counsel indicated that he had advised mother's counsel that reunification services were not warranted because mother failed to

³ Mother admitted using drugs from age 14 to age 30, but claimed that she stopped using drugs at age 30 and had not used them for 4 years prior to the dependency petitions. The court was not required to credit mother's statement that she had stopped using controlled substances, and the record contains substantial contrary evidence. We resolve all conflicts in the evidence in favor of the juvenile court's findings. (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196.)

reunify with Na.R. On August 10, DCFS mailed notice of the recommendation to mother.

On August 19, 2011, the court sustained the petitions and denied mother reunification services. With respect to Le.R. and Ni.R. the court set a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.⁴

DISCUSSION

Mother demonstrates no error in the order denying her reunification services. It is undisputed that the juvenile court may deny a parent reunification services when that parent has failed to reunify with a sibling of the child and the parent has not subsequently made reasonable efforts to treat the problems that led to the removal of the sibling. (§ 361.5, subd. (b)(10).) “The ‘no reasonable effort’ clause provides a means of mitigating a harsh rule that would allow the court to deny services based only upon the parent’s prior failure to reunify with the child’s sibling ‘when the parent had in fact, in the meantime, worked toward correcting the underlying problems.’ [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 97.) For example, a parent may make a reasonable effort to treat a drug problem without curing the problem. (*Ibid.*)

Mother argues that no substantial evidence supports the juvenile court’s finding that she failed to make a reasonable effort to treat the problems that led to Na.R.’s removal. Mother argues that the basis of removal of the children is not the same as the removal of Na.R. We disagree.

Although Na.R. ultimately was removed because she was acting out sexually, her initial removal was the result of mother’s substance abuse and neglect, and jurisdiction on this basis had not terminated.⁵ Overwhelming evidence showed that mother had not

⁴ Undesignated statutory citations are to the Welfare and Institutions Code.

⁵ Assuming Na.R.’s sexualized behavior was the proper focus, the record supports only the conclusion that mother failed to address this problem. L.D. informed a social worker that he had been sexually abused and may have abused Ni.R. L.D. told another child in foster care to “suck his penis,” and when mother was informed she “laughed continuously.” Ni.R. reported that mother’s male companion sodomized him, and that immediately afterwards mother placed him in a bath. Mother’s landlord reported mother hit the children when they were sleeping to tell them to “stop touching each other.”

made a reasonable effort to treat her substance abuse that led to the initial removal of Na.R. (§ 361.5, subd. (b)(10).) Mother repeatedly ignored the order to submit to random drug testing and when she did report, she apparently used urine from other sources. Moreover, she admitted to police that she had used methamphetamine and her boyfriend testified that she used heroin with him.⁶

Mother correctly points out that there was only a month period between her failure to reunify with Na.R. and the denial of her reunification services over the children. Mother argues that is the only relevant time period to consider. Assuming the correctness of her argument, mother fails to identify any conduct during that time period demonstrating an effort to treat the problems that led to Na.R.'s removal. The evidence before the court supported only the finding that mother failed to address her substance abuse problems both prior to and after Na.R.'s removal. There was no evidence that mother took any concrete steps to address her substance abuse problem either prior to her failure to reunify with Na.R. or subsequent to her failure to reunify with Na.R.

Mother's claim that reunification services were in the children's best interest is not persuasive. Contrary to mother's argument, there was no "reasonable basis to conclude that mother's relationship with her seven children" could be saved. Mother had not benefitted from any of the prior reunification services afforded to her. As previously detailed, she continued to severely neglect her children and failed to address her longstanding substance abuse problem. The children, who were old enough to give statements, were thankful for their placements outside of mother's custody because, among other reasons, they no longer had to "walk[] the streets."

Le.R. also reported that mother accused him of sexually acting out. Mother took no steps to address these issues, and no evidence supports mother's claim that she made reasonable efforts to treat the problems that led to Na.R.'s sexually acting out.

⁶ Mother points out that the juvenile court did not make express findings. She argues that "[f]ailure to make findings necessary for a denial of services under section 361.5 does not mandate reversal. However, an implied finding must be supported by substantial evidence." Mother does not argue that the juvenile court was required to make express findings.

Finally, mother's contention that the order must be reversed because she was not provided sufficient notice of DCFS's recommendation to deny her reunification services lacks merit. DCFS substantially complied with statutory requirements by recommending no reunification in its July 28, 2011 report and mailing mother notice August 10, 2011.⁷ To the extent mother is arguing substantial compliance is insufficient, she fails to show that she suffered prejudice from the lack of strict compliance. She states that she "could have appeared . . . and presented evidence," but she identifies no evidence that would have supported a claim the juvenile court should have awarded her reunification services.

DISPOSITION

The order denying mother reunification services with respect to L.D., I.R., El.R., Em.R., and J.R. is affirmed.

FLIER, J.

We concur:

BIGELOW, P. J.

GRIMES, J.

⁷ Section 358, subdivision (a)(3) provides: "If the social worker is alleging that subdivision (b) of Section 361.5 is applicable, the court shall continue the proceedings for a period not to exceed 30 days. The social worker shall notify each parent of the content of subdivision (b) of Section 361.5 and shall inform each parent that if the court does not order reunification a permanency planning hearing will be held, and that his or her parental rights may be terminated within the timeframes specified by law."