

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

A.P.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B241856

(Los Angeles County
Super. Ct. No. CK80328)

ORIGINAL PROCEEDINGS in mandate. Veronica S. McBeth, Judge.

Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Timothy Martella,
Rebecca Harkness, and Sarah Shon, for Petitioner.

No appearance for Respondent.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel,
Stephen D. Watson, Deputy County Counsel for Real Party in Interest.

A.P. (mother) seeks writ review of an order of the juvenile court terminating her reunification services at an 18-month review hearing and setting a selection and implementation hearing for her adoptive son Marcus P. (Welf. & Inst. Code, §§ 366.22, 366.26.)¹ Mother argues the decision to terminate reunification services and not to return Marcus to her custody was not supported by substantial evidence. We find no error and deny the writ petition.

FACTUAL AND PROCEDURAL SUMMARY

In December 2009, the Department of Children and Family Services (DCFS) filed a section 300 petition based on allegations of physical abuse and general neglect of mother's adoptive children Marcus (born in 1998) and A. (born in 1996). The children had been adopted in 2007. The co-adoptive parent, Maria G. (mother's biological mother), is not a party to this writ petition.

DCFS alleged that mother hit A. with a broomstick and a shoe, causing bruises, and forced her to sleep outside or stand in the hallway for extended periods of time. Mother also was alleged to have struck Marcus with a stick, causing bruises. The court detained Marcus and A., but released mother's two biological children to her custody. The court ordered family counseling and monitored visits.

Mother denied the abuse, but could not account for the visible bruises on the children's backs. Marcus initially said he bruised his back and buttocks when he fell at school. His accounts of the fall were inconsistent, the school had no record of it, and the teacher Marcus identified as helping him after the fall denied it. Eventually, Marcus disclosed mother had struck him 25 times with a pool cue because he had incorrectly answered 25 questions on a math test she had given him. A. corroborated Marcus's account of the beating. In August 2010, mother pled no contest to criminal charges of child physical abuse for the beating of Marcus.

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

Also in August 2010, after several continuances, the court amended and sustained the section 300 petition. Mother waived her right to family reunification services as to A. The court ordered mother “to attend parent education, individual counseling to address case issues and anger management and conjoint counseling with Marcus.” Monitored visits were allowed. At the six-month review hearing in February 2011, the court ordered the family reunification services to continue.

Between January and August 2010, mother participated in 14 conjoint family sessions at People Who Care Family Services, but she stopped receiving therapy there in December 2010 without having addressed all case issues. She did not respond to the therapist’s attempts to contact her in January through March 2011 and her case was closed. In July 2011, the agency sent mother a letter, advising her the therapist had left and offering her continued services with another therapist. Mother claimed not to have received this letter. She also said she was too busy with work and her other children to participate in Family Preservation Services.

Mother did not make herself available to the social worker for most of 2011 and did not provide documentation of the therapy in which she was involved. By September 2011, she had completed a 52-week parent education class at Parents of Watts with a counselor who was not a licensed therapist. It was unclear what kind of counseling mother received there, but the counselor advised that mother denied abusing her adoptive children and insisted they were lying.

At the 12-month review hearing in October 2011, the court continued mother’s reunification services over DCFS’s objection, noting that the counselor at Parents of Watts had misled mother by representing she was a licensed therapist. The court ordered that mother and Marcus participate in conjoint counseling with a licensed therapist. Mother was allowed unmonitored visits with Marcus.

By the 18-month review hearing in June 2012, mother was fully compliant with visitation and was attending conjoint therapy with Marcus. But the conjoint therapy had not addressed the case issues, and she had not completed individual counseling.

At the hearing, mother testified that she had eight-hour unmonitored visits with Marcus every Saturday, the focus of which was to have fun and keep him happy. The conjoint therapy sessions dealt with triggers that upset Marcus and ways to control his anger. According to mother, Marcus refused to talk about the allegations. Mother reported she had been waitlisted at 12 facilities and had only begun weekly individual counseling in May 2012. There, she discussed the allegations, triggers and stressors, her relationship with her children, and her expectations of them. Mother maintained she would never hurt her children, and she always provided a safe home for Marcus. She believed she complied with the case plan to the best of her ability, considering she worked, went to school, and took care of her two biological children.

Mother's attorney asked the court to find that extraordinary circumstances required extending reunification services. DCFS and Marcus's attorney argued there was no legal basis for continuing services, and returning Marcus to mother's custody would be detrimental because she had not taken responsibility for the sustained allegations. DCFS advised that Marcus's long-time foster mother was interested in a legal guardianship, which was an appropriate permanent plan for his age.

The court terminated reunification services, finding no extraordinary circumstances because mother had not admitted responsibility for the case allegations and had not progressed beyond unmonitored day visits with Marcus. The court set a section 366.26 hearing, finding that returning Marcus to mother's custody would create a substantial risk of detriment. The court ordered mother to continue visitation and conjoint therapy with Marcus.

This writ petition followed.

DISCUSSION

At the 18-month review hearing, the court must return the child to the parent unless doing so "would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).) In determining whether there would be substantial risk of detriment, the court must consider the reports

and recommendations of the social worker and child advocate, as well as “the efforts or progress, or both, demonstrated by the parent or legal guardian and the extent to which he or she availed himself or herself of services provided.” (*Ibid.*) The parent’s failure to participate regularly and make substantive progress in court-ordered treatment programs is prima facie evidence of detriment. (*Ibid.*)

We review for substantial evidence the dependency court’s finding that return of the child to the parent would create a substantial risk of detriment. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762–763.)

Mother argues she substantially complied with the case plan, and the court improperly focused on her refusal to admit the allegations as evidence she had not benefitted from services. She relies on *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738 (*Blanca P.*). The initial petition in that case alleged physical abuse by the mother. (*Id.* at p. 1742.) A subsequent petition was sustained, alleging the father sexually abused a daughter, but a psychologist exonerated the father of the sexual abuse charges. (*Id.* at pp. 1741–1742.) The parents “faithfully” attended therapy. (*Id.* at pp. 1745–1746.) The social worker nevertheless concluded the parents had failed to progress through the case plan because they refused to admit the father was a child molester. (*Id.* at p. 1747.) The appellate court held that a finding of detriment could not be based on the parents’ refusal to admit what appeared to be false allegations of sexual abuse. (*Id.* at p. 1752.)

Blanca P. is distinguishable because, here, there is nothing to indicate the allegations of physical abuse were false. Mother has not challenged the court’s jurisdictional findings, nor has she provided an adequate explanation for the documented bruises that occasioned Marcus’s initial detention.

Additionally, it cannot be said that mother “faithfully” participated in court-ordered services. Rather, she was resistant to DCFS’s efforts to refer her to family preservation services in 2010, stopped going to therapy at the end of that year, and made herself unavailable to the social worker for most of 2011. Although she was in conjoint

therapy and individual counseling at the time of the hearing in June 2012, there was no indication that the case issues had been adequately addressed in either setting.

Both DCFS and Marcus's attorney recommended that Marcus not be returned to mother under the circumstances. Even mother's counsel argued only for the continuation of services, not the return of Marcus to mother's custody. The court's finding that Marcus's return to mother would be detrimental is supported by substantial evidence. It is not arbitrary.

Mother argues that the court abused its discretion in not continuing the hearing under section 352. The record does not indicate that mother's counsel requested such a continuance, and we consider the issue forfeited. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221–222.)

What counsel requested was that reunification services be continued on the ground that the case presented extraordinary circumstances. Such circumstances have been found to exist where no family reunification plan was developed or implemented, or the parent was prevented from participating in a plan by forces beyond the parent's control. (See *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388 and cases cited there.) The court correctly concluded that no extraordinary circumstances existed in this case. The record indicates that mother's problems with completing court-ordered programs were due in part to her unwillingness to rearrange her schedule and keep in touch with the social worker and her initial therapy provider in 2010 and 2011. At the time of the 18-month hearing, the case had been pending for close to 30 months. Thus, mother had received services over a period much longer than the statutory maximum of 24 months. (See § 366.25, subd. (a)(3) [section 366.26 hearing must be ordered if child not returned to parent at 24-month review hearing].)

We note that, despite terminating services, the court allowed mother to continue her conjoint therapy and visits with Marcus, preserving her right to file a petition based on changed circumstances under section 388.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.