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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

In re C.R., a Person Coming Under the
Juvenile Court Law.

YOLO COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES,

Plaintiff and Respondent,

v.

P.M. et al.,

Appellants.

C067836

(Super. Ct. No.
JV10406)

P.M. and J.M., the de facto parents of four-year-old C.R. (minor), appeal from a disposition order of the Yolo County Juvenile Court directing that minor's mother receive reunification services.

On appeal, the de facto parents contend there was insufficient evidence that (1) mother had made reasonable

efforts to overcome her drug abuse and mental health problems, (2) she had not resisted drug treatment, and (3) reunification services were in minor's best interest.

We conclude that the de facto parents' contentions lack merit. We will affirm the judgment.

BACKGROUND

On October 3, 2010, mother was arrested for being under the influence of a controlled substance. Minor and one of his siblings¹ were with mother at the time of the arrest. Law enforcement released the children to their godparents. The next day, the godmother contacted the Yolo County Department of Employment and Social Services (Department) and expressed concern that mother would try to retrieve the children. In response, the Department placed the children in protective custody.

On October 6, 2010, a petition was filed alleging that minor came within juvenile court jurisdiction due to mother's inability to care for minor and her abuse or neglect of three siblings. (Welf. & Inst. Code, § 300, subs. (b), (j).)²

At the detention hearing the following day, the juvenile court appointed counsel for mother who was not present. Counsel

¹ The sibling is not a party to this appeal. The de facto parents filed a motion to amend their notice of appeal to include an appeal from the judgment in the sibling's dependency case. This court denied the motion in October 2011.

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

advised that mother had been involuntarily hospitalized the previous day. Mother had a history of mental illness as reflected in her child welfare history. The juvenile court made the appropriate findings and orders for detention and scheduled a jurisdiction hearing.

On November 3, 2010, the juvenile court appointed a guardian ad litem for mother.

Due primarily to mother's mental health instability, the jurisdiction hearing was continued on four occasions and was conducted on December 1, 2010. Mother pleaded no contest to the petition as amended and the juvenile court made the appropriate findings and orders for jurisdiction. A disposition hearing was scheduled for December 15, 2010.

At the December 15, 2010 hearing, the juvenile court granted the petition by the foster parents for de facto parent status over the objections of mother and the Department. The disposition hearing was continued to January 4, 2011.

The de facto parents requested a contested hearing on the Department's recommendation to provide family reunification services to mother. The hearing was conducted on February 3, 10, and 28, 2011. The juvenile court ordered that mother receive family reunification services.

The juvenile court found by clear and convincing evidence that the statutory predicates for bypass of reunification

services pursuant to section 361.5,³ subdivisions (b)(10) (prior termination of reunification services), (b)(11) (prior severance of parental rights), and (b)(13) (history of extensive, abusive,

³ Section 361.5, subdivision (b), provides in relevant part:
"Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:
[¶] . . . [¶]

"(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) 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 or half sibling of that child from that parent or guardian.

"(11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, 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. [¶] . . . [¶]

"(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

While the language of section 361.5, subdivision (b) is permissive ("services need not be provided"), section 361.5, subdivision (c) mandates that the court "shall not" order reunification for a parent described in the foregoing paragraphs "unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child."

and chronic use of drugs or alcohol), had been satisfied in that another one of minor's siblings had been removed from mother, and mother's parental rights to that sibling had been terminated, due to mother's failure to successfully complete a substance abuse treatment program. There was no dispute that mother had the requisite history of extensive, abusive, and chronic use of drugs.⁴

After finding that the predicates were satisfied, the juvenile court first concluded that section 361.5, subdivisions (b) (10) and (b) (11), did not apply to mother because she "has made a reasonable effort" to treat the problems that led to the prior removal and severance of parental rights.⁵

The juvenile court further concluded mother's "two and a half years of sobriety" precluded a finding by clear and convincing evidence that she had "resisted prior court-ordered

⁴ The court stated: "The Court finds that by clear and convincing evidence that the provisions of 361.5(b) (10), (b) (11) and (b) (13) apply with respect to mom. [A sibling] was removed and parental rights were terminated because [of] mother's failure to successfully complete a substantial [sic] abuse treatment program." The context makes plain that the court was finding only that the prerequisites to the bypass provisions applied.

⁵ The court found: "She has made efforts to address the substance abuse. The evidence shows that she was clean and sober for two and a half years." The court added: "Ultimately, the Court is going to deny the efforts of the de facto parents on bypass. The Court believes that mother has made a reasonable effort."

treatment" within the meaning of section 361.5, subdivision (b) (13).⁶

DISCUSSION

I

The de facto parents contend that the evidence fails to support the juvenile court's finding that mother made a reasonable effort to overcome the problems that had led to her prior children's removal. They argue the two-and-a-half years of sobriety are insufficient because mother was under Department supervision for the first two years. We are not persuaded.

Mother "has an extensive child welfare history with chronic substance abuse, resulting in three of her five children being no longer under her care, and two of her children currently placed in foster care." From November 2002 through April 2003, in a dependency case for one of the siblings, mother participated in and successfully completed a substance abuse/dual diagnosis program.

⁶ The court stated: "With regards to [section 361.5, subd.] (b) (13), the reason the Court said that it felt it didn't apply is it has resisted prior court ordered treatment. The Court indicated that in the Court's belief, two and a half years of sobriety does not show resistance. That this mother has gone through that treatment. Or has refused to comply with a program of drug and alcohol--or alcohol treatment described in the case plan on at least two prior occasions. The Court believes that that hasn't occurred either, not by clear and convincing evidence."

There is no conclusive evidence that mother abused drugs between February 2002 and October 2007. In October 2007, minor was placed in protective custody following reports that mother was using methamphetamine. The next month, mother was hospitalized and tested positive for methamphetamine. She received four months of treatment at Progress House and approximately one year of treatment at John H. Jones Community Clinic. By October 2009, when mother reunified with minor, mother "was demonstrating positive recovery in her life. She was sponsoring other females new to recovery and had almost two years clean and sober. She was attending . . . meetings at least twice weekly and [was] meeting regularly with her sponsor."

The present dependency arose from mother's relapse in late 2010. There were periods in which mother's mental health had not been under control, often because she had stopped taking her medication and had self-medicated with methamphetamine or other substances. Since minor was taken into protective custody in October 2010, mother has been hospitalized several times.

In the disposition report, the social worker noted that after minor's prior dependency, mother "eventually completed her substance abuse program and parenting classes. She also stabilized her mental health and consistently took her medication. When [mother] is stable on her medications and clean and sober, she is able to keep herself and her children safe and she functions well. On the other hand, when she uses methamphetamine and other substances in place of her prescribed

medication, she becomes angry, delusional, violent, and unpredictable. The difference in her is like day and night.

[¶] When the family came to the attention of the Department two months ago, the mother was not stable mentally, was using illegal substances, and was frequently in trouble with law enforcement. . . . [¶] After the mother's most recent hospitalization, she is sounding much better and says that she is ready to enter treatment again. . . . The mother has proven that she can be successful as a clean and sober parent, but she will have to prove to the Department that she can maintain that lifestyle."

At the hearing, the social worker testified that her recommendation of further services was based in part upon what mother "has done since the children were removed." Mother entered treatment, got back on her medication, and complied with what the Department asked her to do.

Mother explained her 2010 relapse by noting that the children's father had returned to her household and they "relapsed together." By that time, she had "become complacent in [her] program" and had stopped attending narcotics anonymous meetings. Mother believed she could succeed in treating her addiction and mental health issues because she has "learned that [she needs] to stay on [her] medication and that [she has] to continue working a solid program of recovery, doing meetings and attending meetings with [her] sponsor, reaching out to support, to [her] people in [her] support group, when things start getting a little edgy." She learned that she can no longer be

with her ex-husband or any man who has anything to do with drugs.

“‘On review of the sufficiency of the evidence, we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.’ [Citation.]” (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 519.) A juvenile court order for reunification services is an abuse of discretion if the order is not supported by substantial evidence. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1229 (*William B.*))

The record confirms that one of minor’s siblings was removed from mother’s care in or about 2002; that mother failed to reunify with that sibling; and that mother’s parental rights to that sibling were terminated. Thus, the juvenile court properly found that the predicates for application of section 361.5, subdivisions (b)(10) and (b)(11), had been established.

Substantial evidence supports the juvenile court’s finding that mother had made reasonable efforts to treat the problems that led to the removal of the sibling, primarily her substance abuse and her mental health issues. From November 2002 through April 2003, mother participated in and successfully completed a substance abuse/dual diagnosis program. There was no conclusive evidence of further substance abuse from February 2002 until October 2007. The juvenile court could infer from the evidence that mother’s efforts had been reasonable.

The social worker testified that mother had an additional two and one-half years of sobriety from approximately October 2007 to April 2010. In its ruling, the juvenile court stated, "it's hard to say that mom has resisted court ordered treatment when she has been clean and sober for two and a half years."

The de facto parents disagree, claiming "the only time [m]other had been clean and sober, according to all of the testimonial or documentary evidence, was during the time she was directly supervised by Department social workers and for approximately six months thereafter." In the de facto parents' view, this evidence demonstrates only that, "while watched," mother "did not drink and complied with her case plan."

The de facto parents' argument fails because there is no evidence that the Department watched mother throughout the period from February 2002 to October 2007. Thus, there is no evidence that mother was able to remain clean and sober only while under Department supervision and for a brief period thereafter.

The evidence from both periods of sobriety adequately supports the juvenile court's finding that mother made reasonable efforts within the meaning of section 361.5, subdivisions (b)(10) and (b)(11). (*In re Angelique C.*, *supra*, 113 Cal.App.4th at p. 519.) The juvenile court had no duty to dismiss mother's efforts as "half-hearted." (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 99.)

II

The de facto parents also contend the evidence fails to support the juvenile court's finding that mother did not resist treatment. Conceding that she did not "refuse[] or overtly fail[] to comply" with treatment, the de facto parents nevertheless argue mother's relapse within six months of the close of the prior dependency compels a finding of resistance within the meaning of section 361.5, subdivision (b)(13). We disagree.

The de facto parents rely on *In re Brian M.* (2000) 82 Cal.App.4th 1398 (*Brian M.*), in which the mother agreed, as a condition of her probation, to complete a 90-day rehabilitation program. (*Id.* at p. 1401.) Although she agreed to enter the program, she never did so. The reviewing court concluded that failure to attend the program was resistance to treatment within the meaning of section 361.5, subdivision (b)(13). (*Id.* at pp. 1402-1403.) But the present case is distinguishable from *Brian M.* because mother never failed to attend a drug program that she had been ordered, or had agreed, to attend. (*Ibid.*)

Brian M. considered *Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776 (*Laura B.*), which held that proof of resistance may come in the form of dropping out of programs, or in the form of resumption of regular drug use after a period of sobriety. (*Id.* at p. 780.) The mother in *Laura B.* had dropped out of several programs and resumed using drugs. (*Ibid.*) Here, in contrast, mother completed residential and intensive outpatient programs and never dropped out of any treatment programs.

Moreover, the mother in *Laura B.* "did not just suffer a setback; she did not just fall off the wagon on one or two occasions. She stopped attending Narcotics Anonymous meetings and returned to consistent, habitual, semiweekly and then biweekly substance abuse. Regular use of cocaine throughout pregnancy cannot be considered a simple relapse. It is an abundantly clear demonstration of a determination to maintain a drug habit." (*Laura B.*, *supra*, 68 Cal.App.4th at p. 780.)

In this case, however, mother did not demonstrate any determination to maintain a drug habit. Rather, she has a diagnosis of bipolar mental health disorder; she was not taking her psychotropic medications, she was delusional, and she was clearly experiencing mental illness at the time minor was removed. As the Department notes, the juvenile court could infer that mother's period of relapse was driven by her increasing mental illness rather than by any determination to maintain a drug habit. This inference is supported by the fact that, after mother successfully completed 30 days of residential treatment, the treatment counselors did not recommend further residential rehabilitation. The lack of such recommendation suggests that mother's drug use had been a relapse rather than a resumption of regular drug use.

Thus, on this record, the juvenile court had no duty to find that mother had resisted treatment within the meaning of section 361.5, subdivision (b)(13). The juvenile court's refusal to so find is supported by substantial evidence. (*In re Angelique C.*, *supra*, 113 Cal.App.4th at p. 519.)

III

The de facto parents further contend there was insufficient evidence that reunification services were in minor's best interest. They claim the only evidence regarding the current relationship "between the children and [m]other" was the social worker's testimony describing the behavior of one of minor's siblings.

However, there was additional evidence on the issue. The previous social worker, who had worked with mother in 2008 and 2009, opined that mother had a "very good" relationship with minor and the sibling, and that minor was attached to mother.

The current social worker opined that the children "do have a bond with their mom" and that mother "can be a good parent" "[w]hen she stays on her medication."

Mother testified that during supervised visits with the children, they "come running in" and minor jumps on her. The children are "really attentive" and "communicate with" mother.

By failing to address any of this evidence, the de facto parents have forfeited any claim that it is insufficient to support the juvenile court's order. (*People v. Hardy, supra*, 2 Cal.4th at p. 150; *People v. Wharton, supra*, 53 Cal.3d at p. 563.)

In any event, the de facto parents' argument has no merit. They claim the evidence of mother's attachment and bond to minor was insufficient because *William B., supra*, 163 Cal.App.4th 1220 held a greater quantum of evidence to be "insufficient to meet the requirements of Section 361.5, subdivision (c)."

The de facto parents' reliance on *William B.* is misplaced. As that case explains, section 361.5, subdivision (c) applies "[i]f a parent is described by an exception" to reunification listed in section 361.5, subdivision (b). (*William B., supra*, 163 Cal.App.4th at p. 1227.) Thus, "[o]nce it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]" (*Ibid.*)

As we explained in parts I and II above, although their predicates may have been satisfied, none of the asserted "situations outlined in subdivision (b) applies" in this case. (*William B., supra*, 163 Cal.App.4th at p. 1227.) Thus, no issue of sufficiency of evidence for purposes of section 361.5, subdivision (c) is presented.

IV

In support of the juvenile court's judgment, the Department contends that denial of reunification services would interfere with minor's relationship with one of his siblings. But because we have rejected each of the de facto parents' claims of

evidentiary insufficiency and abuse of discretion, it is not necessary to consider the Department's contention.

DISPOSITION

The judgment is affirmed.

_____ MAURO _____, J.

We concur:

_____ HULL _____, Acting P. J.

_____ HOCH _____, J.