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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

M. C.,

Petitioner,

v.

THE SUPERIOR COURT OF BUTTE COUNTY,

Respondent;

BUTTE COUNTY DEPARTMENT OF EMPLOYMENT
AND SOCIAL SERVICES et al.,

Real Parties in Interest.

C069748

(Super. Ct. Nos.
J34860, J35929)

Petitioner M.C., mother of the minors D. and C., seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) to vacate the orders of the juvenile court made at the disposition hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26 hearing (further undesignated section references are to this code). Petitioner also requests a stay of proceedings in the respondent court. We shall deny the petition, rendering the request for stay moot.

FACTUAL AND PROCEDURAL BACKGROUND

Two-year-old D. was detained in July 2009 based on her parents' substance abuse problems. Petitioner admitted she recently used methamphetamine and had a long history of substance abuse. The court ordered family reunification services for petitioner. By the review hearing in September 2010, petitioner had made significant progress and it was anticipated that the minor would be returned with family maintenance services within the next few months. Petitioner completed her case plan and D. was returned to her physical custody. In December 2010 the court adopted a family maintenance case plan with continued supervision by the social worker.

In January 2011 the court continued family maintenance services. Petitioner was due to deliver her second child in March 2011.

In June 2011 the social worker filed a nondetaining petition for three-month-old C. because petitioner had failed to attend counseling for three weeks in January and had two positive drug tests for marijuana, one in May and another in June of 2011. A review report in D.'s case in July 2011 recommended continuing family maintenance services. The report indicated petitioner believed her relapse was triggered by medications she received after C.'s birth. Petitioner admitted she had been using drugs for several months and falsified her drug tests to avoid detection. By the review hearing, petitioner was in custody for being drunk in public.

A supplemental petition, pursuant to section 387, was filed to remove D. and a subsequent petition, pursuant to section 342, was filed to remove C. from petitioner's home. The petitions alleged petitioner's January 2011 lapse in services, her positive drug tests in May and June, and her arrest in July 2011 for being drunk in public, which was also a violation of her felony probation and resulted in jail time. Neither petitioner nor her relatives informed the social worker of the arrest and incarceration. Their plan was to have relatives care for the minors and return them to petitioner when she was released from custody. The court sustained the petitions in September 2011.

The disposition report recommended denial of further services to petitioner for D. because those services exceeded the 18-month limit and denial of services for C. pursuant to section 361.5, subdivision (b)(10). The report stated that when petitioner was arrested she was causing a disturbance with the minors present and her blood-alcohol level was .21 percent. On her release from custody, petitioner entered residential treatment as a condition of probation. At the time of the report, petitioner had consistently tested negative for drugs, was attending programs, and had embraced community-based support groups. She had recently completed another parenting class and had enrolled in a course to earn her GED. Petitioner believed she needed to stay in her current program for one to five years to achieve success in sobriety. The report concluded that, while petitioner's current efforts were commendable, her lack of insight and return to polysubstance abuse as well as statutory

constraints compelled a recommendation to deny further services and set a section 366.26 hearing.

At the hearing, the court heard testimony and argument on the applicability of the limitations and bypass provisions of section 361.5 and California Rules of Court, rule 5.565(f). The court first considered D.'s case and, after reviewing the evidence, concluded there was no additional time for services and it was not in the minor's best interest to return her to petitioner with family maintenance services because petitioner's lack of participation and progress would create a substantial risk of detriment to D. if she were returned home. The court terminated services and set a section 366.26 hearing.

The court then addressed C.'s case, finding that petitioner failed to reunify with D. and had not made reasonable efforts to treat problems which led D.'s removal as evidenced by D.'s redetention. The court found the bypass provision of section 361.5, subdivision (b)(10) applied and there was no clear and convincing evidence that reunification services would be beneficial to C. The court set a section 366.26 hearing as to C.

DISCUSSION

I

Section 361.5, subdivision (b) permits the juvenile court to bypass services to parents whose circumstances demonstrate that provision of services would be futile and only would delay permanence and stability for a child who was removed from the

parent. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744; *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.)

Specifically, section 361.5, subdivision (b)(10) provides, in relevant part, that a court may deny services if there is clear and convincing evidence: "That the court ordered termination of reunification services for any siblings . . . of the child because the parent . . . failed to reunify with the sibling . . . after the sibling . . . had been removed from that parent . . . 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 . . . of that child from that parent"

Petitioner contends that, at the time of D.'s removal on the section 387 petition, she was receiving family maintenance services, not family reunification services, so the bypass provision could not apply and the court erred in denying services for C. We disagree.

To properly understand individual dependency statutes, one must look at the scheme as a whole, keeping in mind the twin goals of family preservation and protection of the minor. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 253; § 300.2.) If a child is not removed from parental custody, family maintenance services may be provided to support the family and address problems that could otherwise lead to removal. (§ 16501, subd. (g).) If a child is removed from parental custody, the court may order reunification services designed to remedy the

neglect or abuse that led to removal or may, in a proper case, bypass services. (§ 16501, subd. (h); 361.5, subd. (b).)

If removal has occurred, section 361.5 -- coupled with sections 366.21, 366.22, and 366.25 -- sets time limits on reunification efforts, which limits are dependent upon the child's age and the progress of the parent in services. The family reunification scheme contemplates that, as parents demonstrate the ability to provide a safe home for the child, return of the child with additional support services can lead to a stable family where the issues which led to removal have been addressed and termination of the dependency is appropriate.

However, recognizing the potential for relapse into harmful patterns of behavior, the Legislature has provided for a second removal on a supplemental (§ 387) petition if the child is again placed at risk while the goal of full reunification is occurring. Moreover, the Legislature, aware of the time limits on services, has also provided that the service period is not tolled during any period that the child has been returned to the physical custody of the parent. (§ 361.5, subd. (a)(3).) To facilitate this statute, California Rules of Court, rule 5.565(f) provides that, "If a dependent child was returned to the custody of a parent . . . and a 387 petition is sustained and the child removed once again, the court must set a hearing under section 366.26 unless" additional time for reunification services remains.

Thus, viewed as a part of an ongoing process, services that are provided to a family where the child has been returned under

supervision but is still subject to removal on a section 387 petition are reunification services within the meaning of the bypass provisions of section 361.5, subdivision (b)(10). Had petitioner only received family maintenance services, the bypass provision would not apply. However, when a parent begins with reunification services, and depending on the time period the child remains in the parent's physical custody, upon a second removal the parent either is entitled to additional services or is subject to an order setting a section 366.26 hearing. The mere fact that petitioner had services for more than 18 months and could not be offered additional reunification services upon D.'s removal on the section 387 petition does not mean that petitioner is not subject to the bypass provisions of section 361.5, subdivision (b)(10) for C. The juvenile court did not err in applying the bypass provision.

Petitioner argues the social worker's report did not claim services had been terminated for D. when discussing the applicability of the bypass. At the time of the report those services had not yet been terminated and the social worker properly did not claim they had. However, the other conditions supporting the bypass provision were discussed so that if the court decided to set a section 366.26 hearing for D. rather than return her to petitioner's custody, effectively terminating reunification services, the court would have full information on the other conditions of the bypass provision of section 361.5, subdivision (b)(10).

Petitioner contends the court erred in relying on *Riverside County Dept. of Public Social Services v. Superior Court* (1999) 71 Cal.App.4th 483, which held that the bypass provision of section 361.5, subdivision (b)(10) can apply so long as termination of services in the first case occurs before a disposition is made in the second case. (*Riverside*, at p. 491.) Petitioner asserts timing was not at issue and that bypass in the *Riverside* case relied on termination of parental rights, not termination of services. As we have concluded the services for D. were family reunification services, timing was at issue. Moreover, while *Riverside* involves termination of parental rights, a later case, *Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1148, applied the *Riverside* rule to a case involving reunification services. We concur with the reasoning and result in *Marlene M.*

Petitioner notes that, in discussing the application of the bypass provision, the court commented on the length of petitioner's services in Debra's case. Petitioner relies on *Rosa S. v. Superior Court* (2002) 100 Cal.App.4th 1181 for the proposition that the court may not base denial of services on the length of services in a prior case. *Rosa S.* is distinguishable on its facts because in *Rosa S.*, the mother had 12 months of services, the minor was returned, the dependency was terminated, and the minor was again detained eight months later. (*Id.* at pp. 1183-1184.) Here, the dependency for D. was not terminated; she was redetained on a section 387 petition, not a new petition. In any case, the court's reference to the

length of services petitioner was offered in D.'s case was merely descriptive of the fact that she had had services and failed to reunify with D. The court was not relying on the fact of the length of services to D. to apply bypass to C., it was discussing the conditions which had to be met to satisfy the bypass provision.

II

A parent can avoid the bypass provisions of section 361.5, subdivision (b)(10) if it can be shown that the parent has "subsequently made a reasonable effort to treat the problems that led to removal of the sibling." (§ 361.5, subd. (b)(10).)

Petitioner argues the court abused its discretion in concluding she had not made reasonable efforts to treat the problems that led to D.'s removal because the evidence showed 21 months -- from September 2009 to May 2011 -- of successful participation in services prior to D.'s redetention. Petitioner mischaracterizes the state of the record.

During the period that D. was in foster care, petitioner's involvement in services and progress in resolving her issues was good. As a result, the court returned D. to petitioner's custody in December 2010. Within a month, petitioner had a lapse in attending her counseling services and did not contact the social worker to explain her failure to attend. In May and June of 2011 petitioner had positive drug tests, admitted several months of drug use, and falsified tests to avoid detection of drug use. As a result, C. became the subject of a nondetaining petition. Petitioner did not refocus her attention

on her services and care of the minors. Instead, she was arrested in July 2011 for being drunk in public, a violation of her probation, conspired with relatives to conceal that fact from the social worker, and arranged for relative care without clearing the placements with the social worker.

Even if she had made reasonable efforts to treat the problems that led to D.'s initial removal when D. was in foster care, once D. was returned, petitioner was unable to sustain her efforts, accept responsibility for her lapses, or exercise good judgment in her choices. C.'s detention and D.'s redetention were evidence of an additional parental failure to provide adequate care.

When petitioner was released from custody she entered a residential treatment program as a condition of her release. By the hearing, she had only been in this program for a few months and recognized she needed years of treatment to be stable in her recovery. The court correctly concluded her efforts did not meet the requirements of reasonableness necessary to avoid the operation of the bypass provisions of section 361.5, subdivision (b)(10). No abuse of discretion appears.

III

Petitioner contends the court erred in failing to return D. under a family maintenance plan, arguing that the court "was obligated to find that '. . . return of the child would create a substantial risk of detriment to the child.'" Petitioner argues the evidence showed she had been clean and sober for four months

at the time of the hearing and D. could be placed with her at the residential treatment facility.

Petitioner fails to account for the provisions of California Rules of Court, rule 5.565(f), which required the court to set a section 366.26 hearing for D. because the time limit for services had lapsed. In any case, petitioner's relapse into polysubstance abuse and her efforts to conceal the relapse indicate a more serious substance abuse problem than four months in a residential treatment facility could address. D. remained at substantial risk of detriment if returned to petitioner's care. No error appears.

DISPOSITION

The petition for extraordinary writ is denied. The request for stay is denied as moot.

RAYE, P. J.

We concur:

MURRAY, J.

DUARTE, J.