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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

In re S.R. et al., Persons Coming Under the Juvenile
Court Law.

C074094

BUTTE COUNTY DEPARTMENT OF
EMPLOYMENT AND SOCIAL SERVICES,

(Super. Ct. Nos. J36314,
J36315)

Plaintiff and Respondent,

v.

T.R.,

Defendant and Appellant.

T.R., mother of the minors, appeals from orders of the juvenile court made at the six-month review hearing terminating her services as to the minors S.R. and V.R. (Welf. & Inst. Code, §§ 366.21, subd. (e), 395 [further undesignated statutory references are to the Welfare and Institutions Code].) Mother contends the court exceeded its statutory authority by terminating her reunification services while continuing father's services. Mother further contends that, even if the juvenile court was not required to

continue her services, it abused its discretion in failing to do so. Finally, mother asserts that the court erred in making findings regarding the sibling relationship because such findings were premature. We affirm.

FACTS

The minors, four-month-old S.R. and two-year-old V.R., were detained in April 2012 due to parental substance abuse and neglect.¹ At disposition in September 2012, the court ordered reunification services for the parents. Although the Butte County Department of Employment and Social Services (Department) made services available to mother following the detention hearing, mother did not participate in treatment or drug tests prior to the disposition hearing, denying that she had substance abuse issues.

The February 2013 six-month review report recommended continued services for father but termination of mother's services. Mother had not actively participated in her service plan and continued to deny the minors were at risk in her care. Mother participated in a substance abuse assessment but was terminated twice from a treatment program and discharged from family treatment court for absences. After a second assessment, she went to an outpatient drug treatment program, attended one group session, and never returned. She was referred three times to the parent support group but did not attend and was unable to participate in the parenting class until she completed the group. Mother missed 24 of 25 drug tests and tested positive the one time she did test. Mother attended the twice weekly supervised visitation although she was occasionally late or absent. Mother's parenting was inconsistent, demonstrating positive parenting at times and at other times failing to set limits, redirect the minors, or defuse their negative emotions. Further, the parents often became angry or upset in visits and discussed

¹ Three older minors were also detained but are not subjects of this appeal.

placement issues. The report assessed the sibling group relationship pursuant to section 366.21, subdivision (e). The review hearing was continued several times.

The six-month review hearing commenced in April 2013 with testimony from the social worker addressing the goal of placing the minors together when possible and the difficulties in maintaining them in placement due to behavioral issues of some of the children. The social worker testified the Department continued to offer services to mother after the six-month deadline in February 2013. In the social worker's opinion, mother's difficulty was lack of follow-through, in part as a result of her denial of what was happening in the case and her focus on the initial removal instead of on reunification. The hearing was continued for further testimony.

The hearing resumed in June 2013, by which time the 12-month review report had been filed. The 12-month review report recommended termination of services for both parents. Since the previous report, mother had declined residential treatment, begun to attend the parent support group, and attended an intensive two-day parenting class on her own. Mother had not provided logs for support group meetings and had either failed to test or tested positive for marijuana and methamphetamine while continuing to deny drug use. The most recent positive test was in May 2013. The report concluded that, after 12 months of services, the parents had made little progress toward reunification. The report also contained a consideration of sibling relationships. Though the 12-month report was on file, the court limited testimony to the February 2013 report and trailed the 12-month review hearing.

Mother testified that the minors and their siblings were a unit and had visited together until recent changes in placement. Mother said she had been in a drug treatment program for two months and attributed the delay in participation in her case plan to ongoing depression, which she only recently discovered. She did not realize until after the six-month review hearing was set that she was depressed and did not start services before that. She was planning on talking to her doctor about her depression. Mother

testified she had been clean and sober since November of 2012 and disputed the accuracy of a subsequent positive test. She was told a later test by her probation officer was negative. She denied having any anger problems or domestic violence issues and was in marriage counseling with her husband. Mother testified she accepted responsibility for her actions. She had just completed both the parent support group and an intensive parenting class and was signed up for another parenting class. Mother testified she missed many drug tests because she disagreed with the results of the first test but was currently testing whether she agreed with the test results or not. Mother declined residential treatment because she could not have all five of her children with her.

Mother argued that despite a late start, she was now engaged in services. She asserted that because the five minors were a sibling group, she should get further services. Counsel for the Department pointed out that if the five minors were a sibling group, then mother was entitled to only six months of services for all of them.

In ruling, the court stated it had reviewed the sibling group factors set forth in the six-month review report and found the Department had made efforts to keep the minors together, but the diversity of needs and behavioral issues affected placement decisions. Having considered the sibling relationship, the court followed the Department's recommendation to terminate mother's reunification services, noting it was not persuaded by mother's excuses for failing to engage in services in a timely fashion. The court ordered further services for father but did not set a section 366.26 hearing.

DISCUSSION

I

Mother contends the court exceeded its statutory authority in terminating her services while continuing services for father because the statute does not permit termination of services without setting a section 366.26 hearing. We disagree.

Mother relies on section 366.21, subdivision (e), which provides in relevant part: "If the child was under three years of age on the date of the initial removal, or is a

member of a sibling group described in subparagraph (C) of paragraph (1) of subdivision (a) of Section 361.5, and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days.” However, if there is a substantial probability that the child or member of a sibling group may be returned to his or her parent, the court shall continue the case to the 12-month review hearing. (§ 366.21, subd. (e).) Mother argues that the provision means that if a section 366.26 hearing is not set and services are extended to one parent, services must be extended to both. The decision in *In re Jesse W.* (2007) 157 Cal.App.4th 49 (*Jesse W.*) has addressed this question.

Where, as here, there is a sibling group with a child under the age of three, the court may exercise its discretion to terminate services for some or all of the sibling group after six months of services. (§ 361.5, subd. (a)(1)(C); 366.21, subd. (e).) Section 366.21, subdivision (e), which governs six-month review hearings, does not contain a provision that specifies the procedure for a case where termination of services is contemplated for one parent but not for the other. Nonetheless, the *Jesse W.* court concluded that the juvenile court is not required to continue to offer services to a parent who has made little or no attempt to reunify, regardless of whether it sets a section 366.26 hearing. (*Jesse W.*, *supra*, 157 Cal.App.4th at pp. 63, 65.) We agree with the majority opinion in *Jesse W.* that services to one parent are not conditioned on provision of services to the other parent and that the efforts of one have no relationship to the offer of services to the other. (*Id.* at p. 60.) Reunification is often successful with one, but not both, parents, particularly where one parent is not interested in participating in services. We decline mother’s invitation to follow the dissenting opinion, finding the majority reasoning more persuasive.

A parent is not entitled to a minimum period of services either as a constitutional or statutory right. (*In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1242-1243.) In some

cases, services may be provided to only one parent while the other parent is bypassed. (§ 361.5, subd. (b).) When determining what services are appropriate at disposition, each parent is assessed separately so that services can be tailored to the family needs. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777.) Thereafter, success or failure in reunification is assessed separately as to each parent. (*Jesse W., supra*, 157 Cal.App.4th at p. 60.) Continuing to offer services to a parent who lacks motivation to reunify may be found to be an unwise use of governmental resources. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 566.) When a section 366.26 hearing has not been set because services have been continued for one parent, the juvenile court is simply required to exercise its sound discretion to permit or terminate the other parent's services. (*Jesse W., supra*, 157 Cal.App.4th. at pp. 65-66.)

II

Mother argues that if services may be terminated separately for each parent, then the juvenile court abused its discretion by terminating her reunification services.

The juvenile court has broad discretion in determining whether further reunification services would be in the minor's best interests. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523.) The exercise of the juvenile court's discretion will not be disturbed absent clear abuse. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

More than 10 months after the minors were detained, mother had not actively participated in her service plan. She was in denial about the level of risk she presented to them. Mother was terminated twice from a treatment program and discharged from family treatment court for absences. She later went to an outpatient drug treatment program, attended one group session, and never returned. She was referred three times to the parent support group but did not attend. Mother missed 24 of 25 drug tests and tested positive the one time she did test. She did visit the minors but her parenting was inconsistent, demonstrating positive parenting at times and at other times failing to set

limits, redirect the minors, or defuse their negative emotions. Mother testified she did not even begin services until well after the six-month review hearing was set. She had shown some progress in services by the time of the hearing but still demonstrated resistance to services, denial, and inability to take responsibility. Under the circumstances, the juvenile court did not abuse its discretion in denying extension of her services to the 12-month limit.

III

Mother, relying on section 366.21, subdivision (e), asserts that the court improperly made findings regarding the sibling relationship because a section 366.26 hearing was not set.²

The court did not set a section 366.26 hearing and the portion of section 366.21, subdivision (e) relied on by mother does not apply. However, because the court may terminate services as to some or all members in a sibling group, in exercising its discretion to terminate or continue services when a sibling group is involved, some assessment of the group and the individuals in the group may be required. (§ 361.5, subd. (a)(1)(C).) Nothing in the statute prevents the juvenile court from considering some or all of the factors listed in section 366.21, subdivision (e) when exercising its discretion to terminate or continue reunification services to a parent for some or all of a sibling group.

Moreover, mother litigated the placement of the sibling group and the relationship of the minors to each other, challenging the Department's separation of the minors. When ruling on the six-month review hearing issues, the court did not make findings for

² Section 366.21, subdivision (e) provides, in relevant part: "For the purpose of placing and maintaining a sibling group together in a permanent home, the court, in making its determination to schedule a hearing pursuant to Section 366.26 for some or all members of a sibling group . . . shall review and consider the social worker's report and recommendations." The statute then lists various factors that the court may consider.

purposes of placing the minors in permanent homes; rather, it addressed the issue litigated by mother and stated that it had considered the sibling group factors and found the Department made efforts to keep the minors together, but the diversity and needs of each affected their current placements. Further, the court was entitled to, and did, take the characteristics of the sibling group and individuals into account when deciding to terminate services. There were no premature findings for permanency placement. To the extent that the court's comments could be read to constitute such findings, any error was harmless since no issues appropriate for a section 366.26 hearing were foreclosed.

DISPOSITION

The orders of the juvenile court are affirmed.

_____ RAYE _____, P. J.

We concur:

_____ BLEASE _____, J.

_____ HULL _____, J.