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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AMANDA A.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061083

(San Diego County
Super. Ct. No. SJ12642)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Garry G. Haehnle, Judge. Petition denied. Request for stay denied.

Amanda A. seeks review of juvenile court findings and orders denying family reunification services to her under Welfare and Institutions Code¹ section 361.5, subdivisions (b)(10) and (b)(11), and setting a hearing under section 366.26 to select and implement a permanency plan for her son, M.G. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

M.G., born September 2011, is the son of Amanda A.² He has two older siblings, A.P., born September 2005, and R.P., born August 2008. A third sibling, E.P., was born in February 2007 and died four months later of pneumonia complications.

Amanda began using methamphetamine in approximately 1997, when she was 18 years old. In 2000, she was convicted on a charge of possession of a controlled substance and was sentenced to 36 months probation. She incurred other drug-related charges in 2002, 2003, 2005, 2006, 2007 and 2008, and her probation was terminated unsuccessfully shortly before R.P.'s birth in 2008.

According to Amanda, her methamphetamine use increased in 2006 due to her involvement in an abusive relationship. In February 2007, child welfare services in Solano County (CWS) received a referral alleging that Amanda had tested positive for drugs when E.P. was born. CWS was unable to locate the family after receiving the

¹ Unless otherwise specified, all statutory references are to the Welfare and Institutions Code.

² The juvenile court had not received the results of the alleged father's paternity test by the time of the dispositional hearing. His attorney represented to the court that if the paternity test results showed that his client was M.G.'s father, he would file a section 388 petition seeking family reunification services.

referral. E.P. died in June. Amanda said that her methamphetamine use intensified after the baby's death.

Amanda tested positive for methamphetamine when R.P. was born in August 2008. She acknowledged that she had used methamphetamine on at least three separate occasions during her pregnancy. CWS offered voluntary services to Amanda, including substance abuse treatment, grief counseling, assistance from the public health nurse and referrals to community services for food and housing. In September, Amanda began attending a substance abuse treatment program. She tested positive for methamphetamine in early October. Amanda denied responsibility and claimed that the positive test was a result of taking diet pills.

In late October 2008, Amanda was arrested (and later convicted) on charges of receiving stolen property and child endangerment. Other adults who were living in her home were charged with possession of illegal substances and drug paraphernalia. CWS initiated dependency proceedings on behalf of A.P. and R.P. (together, the siblings). The juvenile court ordered the siblings returned to Amanda's care and ordered a plan of family maintenance services.

In June 2009, Amanda twice tested positive for methamphetamine. In August, Amanda was discharged from a substance abuse treatment program due to her repeated absences from that program. After Amanda's discharge from the treatment program, CWS filed a supplemental petition on behalf of the siblings and detained them in protective custody. In December, the juvenile court removed the siblings from Amanda's care and ordered a plan of family reunification services.

Amanda did not participate in services to reunify with the siblings. At the six-month review hearing in April 2010, the juvenile court terminated reunification services in the siblings' cases. Amanda's parental rights to A.P. and R.P. were terminated on September 22, 2010.

In September 2011, when M.G. was born, both he and Amanda tested positive for methamphetamine and amphetamine. Amanda denied that she had used methamphetamine and maintained that the positive test results were due to a pill that a friend's mother had given her for stomach pain a week earlier. Amanda claimed that the last time she had used methamphetamine was in 2008. The friend's mother denied that she had provided any medication to Amanda.

The San Diego County Health and Human Services Agency (the Agency) detained M.G. in protective custody and filed a petition under section 300, subdivision (b). The Agency alleged that M.G. was at substantial risk of serious harm or illness due to his exposure to methamphetamine and Amanda's substance abuse history and that Amanda had not completed a substance abuse treatment program and denied having a substance abuse problem. The juvenile court sustained the petition on October 24, 2011.

The Agency recommended that the juvenile court deny family reunification services to Amanda under section 361.5, subdivisions (b)(10) and (b)(11). A contested disposition hearing was held on December 6 and 7. The juvenile court admitted in evidence the Agency's reports, which included minute orders from the siblings' dependency cases. The court heard testimony from social worker Cynthia Hernandez, Amanda, and Amanda's case manager, Chalise Simmons.

Hernandez testified that Amanda was participating in voluntary services. Amanda had entered an inpatient substance abuse treatment program, KIVA, and was also participating in individual counseling. She regularly visited M.G. Hernandez said that she believed that Amanda had minimal insight into her substance abuse problem and its effect on her children. Amanda denied that she had used drugs during her pregnancy despite having tested positive for methamphetamine and amphetamine after M.G.'s birth. Hernandez stated that in view of Amanda's history of substance abuse, her lack of insight into protective concerns and her failure to accept responsibility for placing M.G. at risk of harm, it was not in M.G.'s best interests to offer family reunification services to Amanda.

Simmons testified that Amanda was participating in a six-month substance abuse treatment program at KIVA that included parenting classes, relapse prevention, a process group and programs on sober living, life skills and health. Amanda had tested positive for methamphetamine when she first entered KIVA on September 14, but her subsequent tests had all been negative for substance abuse. Simmons stated that Amanda was focused and motivated to complete the treatment program, and said that she was at her expected treatment level. When Amanda first arrived at the program, she claimed that she had last used drugs on August 1, 2010, but admitted that she had recently used drugs at their second meeting.

Amanda testified that she last used methamphetamine on September 12, 2011. She had lied to the social worker about her drug use during her pregnancy with M.G. because she was scared and in denial. During her substance abuse treatment program in the siblings' cases, Amanda had relapsed on the anniversary of her son's death.

According to Amanda, her participation in KIVA was different from her previous treatment. Amanda said she now was "actually doing" the 12-step program, going to meetings and paying attention in class. Amanda acknowledged that she was an addict, but claimed that she had used methamphetamine on only two occasions in 2011, shortly before and after M.G.'s birth.

The juvenile court found that Amanda had failed to reunify with M.G.'s siblings and that her parental rights to them had been terminated. The court further found that Amanda had not subsequently made a reasonable effort to treat the problems that led to the removal of the siblings from her care. The juvenile court stated that there was no evidence to show that Amanda had participated in any type of substance abuse treatment program after Amanda's other children were placed for adoption in 2010. Instead, she knowingly used methamphetamine while she was pregnant with M.G., and again after he was removed from her care. The juvenile court stated that it did not find credible Amanda's testimony that she had not used drugs from 2010 until shortly before M.G.'s birth. The juvenile court denied reunification services to Amanda under section 361.5, subdivisions (b)(10) and (b)(11), and set a section 366.26 hearing to select and implement a permanency plan for M.G.

Amanda petitions for review of the juvenile court's orders. (Cal. Rules of Court, rule 8.452; § 366.26, subd. (l).) She asks this court to reverse the order setting a section 366.26 hearing, and to remand the matter with directions to the juvenile court to enter orders for family reunification services and visitation. This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

Amanda contends that the juvenile court erred when it bypassed family reunification services for her under section 361.5, subdivisions (b)(10) and (b)(11), and set a hearing to select and implement a permanency plan for M.G. Amanda maintains that there is not substantial evidence to show that she failed to make reasonable efforts to treat the problems that led to the removal of M.G.'s siblings' from her care.

A. *Legal Standards for the Denial of Family Reunification Services Under Section 361.5, Subdivisions (b)(10) and (b)(11)*

Family reunification services play a critical role in dependency proceedings. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 563.) Ordinarily, when a child is removed from parental custody, the juvenile court must order the social services agency to offer or provide family reunification services to the mother and statutorily presumed father. (§ 361.5, subd. (a).) However, in some circumstances, "the general rule favoring reunification is replaced by a legislative assumption that offering services [to the parent or parents] would be an unwise use of governmental resources." (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744 (*Renee J.*))

To deny family reunification services to a mother or statutorily presumed father, the court must find by clear and convincing evidence that the parent is described by one or more of the provisions in section 361.5, subdivision (b). (§ 361.5, subd. (b)(1)-(15); see also 42 U.S.C. § 671(a)(15)(D).) The juvenile court may deny family reunification services to a parent when the court has terminated that parent's reunification services for the child's sibling in a previous dependency proceeding because the parent failed to

reunify with the sibling (§ 361.5, subd. (b)(10)) or has terminated the parental rights of the parent to the child's sibling (§ 361.5, subd. (b)(11)), *and* the court finds that that "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." (§ 361.5, subd. (b)(11); *K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393-1394 (*K.C.*).

To show a reasonable effort, a parent is not required to have resolved the problems that led to the removal of the sibling from his or her custody. The reasonable effort standard "is not synonymous with 'cure.'" (*Renee J., supra*, 96 Cal.App.4th at p. 1464.) Rather, the reasonable effort prong allows "a parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings." (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 843 (*Harmony B.*); *K.C., supra*, 182 Cal.App.4th at p. 1393 [to be reasonable, the parent's efforts must be more than lackadaisical or half-hearted].) Thus, the reasonable effort prong of section 361.5, subdivisions (b)(10) and (b)(11), mitigates an otherwise harsh rule that would allow the court to deny services simply on a finding that a parent had not reunified with, or that the parent's parental rights had been terminated as to, the child's sibling. (*Harmony B., supra*, at p. 843.)

In reviewing an order denying reunification services under section 361.5, subdivision (b), we determine whether there is substantial evidence to support the order. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96.) "When the sufficiency of the evidence to support a finding or order is challenged on appeal, even where the standard of proof in the trial court is clear and convincing evidence, the reviewing court

must determine if there is any substantial evidence -- that is, evidence which is reasonable, credible and of solid value -- to support the conclusion of the trier of fact. [Citations.] In making this determination, we recognize that all conflicts are to be resolved in favor of the prevailing party and that issues of fact and credibility are questions for the trier of fact. [Citations.] The reviewing court may not reweigh the evidence when assessing the sufficiency of the evidence." (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) The party challenging the ruling of the trial court has the burden to show that the evidence is insufficient to support the ruling. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

B. There is Substantial Evidence to Support the Finding that Amanda Did Not Make Reasonable Efforts to Treat the Problems that Led to M.G.'s Removal from Her Custody

Amanda argues that there is not substantial evidence to support the finding that she did not "subsequently [make] a reasonable effort to treat the problems" that led to the removal of M.G.'s siblings from her care. (§ 361.5, subs. (b)(10), (11).) Amanda contends that her participation and progress in an inpatient treatment program constitutes a reasonable effort to treat her substance abuse problem.

In evaluating whether a parent has made a reasonable effort to address the problems that led to the removal of the child's siblings from his or her care, the juvenile court is not limited to considering only those efforts that the parent made after the social services agency has intervened to protect the child. Instead, the juvenile court may consider "the *duration, extent and context* of the parent's efforts, as well as any other

factors relating to the *quality and quantity* of those efforts." (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*.)

This is precisely what the juvenile court did here. The juvenile court looked at Amanda's efforts to treat her substance abuse problem from the time her parental rights to M.G.'s siblings were terminated in September 2010 to the date of the dispositional hearing—a period of 15 months. There is nothing in the record to suggest that Amanda made any effort to treat her substance abuse problem from April 2010, when the juvenile court terminated reunification services in the siblings' cases, until mid-September 2011, when M.G. was removed from Amanda's care. Further, the record permits the reasonable inference that Amanda's participation in a treatment program was prompted only by M.G.'s removal from her care, and not by any insight into the risks that parental methamphetamine use presents to children.

According to Amanda's own testimony, she made, at best, only a half-hearted effort to regain her sobriety during the siblings' dependency cases. The record shows that she did not participate in family reunification services after M.G.'s siblings were removed from her care in August 2009. The juvenile court did not believe Amanda's testimony that she had used methamphetamine on only two occasions since 2010. To the extent the trial court's findings rest on an evaluation of credibility, the findings should be regarded as *conclusive* on appeal. (*Estate of Fries* (1965) 238 Cal.App.2d 558, 561.) The record thus supports the reasonable inference that after losing her parental rights to M.G.'s siblings, Amanda continued to use methamphetamine, including during her pregnancy with M.G. The record also shows that Amanda used methamphetamine shortly after

M.G. was detained in protective custody, and that she tested positive on admission to KIVA.

The juvenile court could reasonably reject Amanda's argument that her three months of participation in an inpatient substance abuse treatment program, which she entered two days after having used methamphetamine, constituted a reasonable effort to treat her methamphetamine addiction. In view of Amanda's history of substance abuse and prior opportunities to treat her addiction, the record supports the conclusion that Amanda's recent participation in substance abuse treatment, while a positive first step, is both qualitatively and quantitatively insufficient to support the finding that she made a reasonable effort to treat the problems that had led to the removal of M.G.'s siblings from her care. (*R.T.*, *supra*, 202 Cal.App.4th at p. 914.)

The purpose of the reasonable effort prong of section 361.5, subdivisions (b)(10) and (b)(11), is not to create further delay for a child by allowing a parent, who up to that point has not reasonably addressed his or her problems, another opportunity to do so. (*Harmony B.*, *supra*, 125 Cal.App.4th at p. 843.) Viewing Amanda's history in its totality, we conclude that there is substantial evidence to support the juvenile court's finding that Amanda did not make a reasonable effort to treat the problems that led to the removal of M.G.'s siblings from her care. Accordingly, the juvenile court did not err when it denied reunification services to Amanda under section 361.5, subdivisions (b)(10) and (b)(11).

DISPOSITION

The petition is denied. The request for a stay is denied.

AARON, J.

WE CONCUR:

NARES, Acting P. J.

MCDONALD, J.