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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re T.S., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

TAMI B.,

Defendant and Appellant.

D061257

(Super. Ct. No. J511740L)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia Bashant, Judge. Affirmed.

Tami B. appeals a judgment declaring her minor son, T.S., a dependent of the juvenile court, removing him from her custody, placing him in out-of-home care and denying her reunification services under Welfare and Institutions Code section 361.5,

subdivision (b)(10) and (11).¹ Tami contends the court erred by denying her reunification services because, despite having lost custody of T.S.'s siblings in prior dependency cases, she made reasonable efforts to treat her substance abuse problem. She further contends it was in T.S.'s best interests to provide her with reunification services. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2011, the San Diego County Health and Human Services Agency filed a petition in the juvenile court under section 300, subdivision (b) alleging one-year-old T.S. was at substantial risk of harm as a result of his parents' substance abuse. Specifically, the petition alleged Tami sold cocaine base to an undercover agent while T.S. was nearby with his father, Bernard S.² Further, Tami had a lengthy history of substance abuse and had used cocaine a week earlier. Tami was arrested for transporting and selling a controlled substance, and for child cruelty.³ The police report described Tami's actions as "extremely dangerous" because T.S. was present during the drug transaction, and Tami's attempt to "[rip] off" the undercover agent could have had violent consequences. The court detained T.S. in out-of-home care.

Tami had 11 other children, none of whom were in her care. She had received reunification services in prior dependency cases for these children and was unsuccessful

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

² Bernard is not a party to this appeal.

³ Tami later pleaded guilty to possession and sale of cocaine. Her 240-day sentence was stayed, conditioned on her enrollment in drug treatment.

in reunifying with them. Five of her children had been adopted following termination of Tami's parental rights. Tami had an extensive criminal history, including 26 arrests and numerous convictions for drug possession and prostitution.

Just after T.S. was born, Tami participated in voluntary services for a year (from August 2010 to August 2011). She graduated from a seven-month residential drug treatment program in February 2011. When T.S. was taken into protective custody the following November, he tested positive for cocaine. Tami acknowledged she had been breastfeeding T.S. after recently relapsing into drug use. She had a history of participating in substance abuse treatment, followed by relapse, dating to 1997.

After the dependency petition was filed, the social worker gave Tami referrals to parent education, housing resources, in-home services and substance abuse treatment. Tami attended two parenting classes and enrolled in a drug treatment program in December 2011. At the time of the jurisdiction and disposition hearing in January 2012, Tami was in phase one of a four-phase program.

At the contested jurisdiction and disposition hearing, Tami testified she had a sponsor with whom she had been working for the past two weeks and was attending Narcotics Anonymous meetings four times a week. She said she did not know about the dangers of breastfeeding her baby after using drugs. Tami admitted having previously been in recovery programs. She also admitted she had been involved in a violent confrontation with Bernard in March 2011.

After considering the evidence and arguments of counsel, the court sustained the allegations of the petition, declared T.S. a dependent, removed him from parental custody

and placed him in foster care. The court ordered reunification services for Bernard, but denied services for Tami under section 361.5, subdivision (b)(10) and (11).

DISCUSSION

I

When a dependent child is removed from parental custody, the court generally orders services for the family to facilitate its reunification. (§ 361.5, subd. (a); *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) Reunification services, however, need not be offered if certain circumstances specified by statute apply. (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 739.) Under section 361.5, subdivision (b)(10) and (11), the court may deny reunification services to a parent who has failed to reunify with the minor's sibling or half sibling or whose parental rights to the minor's sibling or half sibling were terminated. Denial of services under these provisions requires the court to find the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling" (§ 361.5, subd. (b)(10) & (11).) Tami contends there was no substantial evidence to support the court's order denying her reunification services under section 361.5, subdivision (b)(10) or (11) because she had made reasonable efforts to treat the problems—her substance abuse—that led to the removal of T.S.'s siblings.

A

By enacting section 361.5, subdivision (b)(10) and (11), the Legislature intended to provide services only if they would facilitate the return of children to parental custody. (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.) When the court determines one of those provisions applies, the general rule favoring reunification is replaced with a

legislative presumption that offering services would be " 'an unwise use of governmental resources.' " (*Renee J. v. Superior Court, supra*, 26 Cal.4th at p. 744.) In other words, " 'the likelihood of reunification is so slim that scarce resources should not be expended on such cases.' " (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th at 87, 96.) Inherent in this subdivision is " 'a very real concern for the risk of recidivism by the parent despite reunification efforts.' " (*Ibid.*)

In evaluating whether a parent has made "a reasonable effort" to treat the problems that led to removal of the sibling or half sibling (*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 98), the court focuses on the extent of the parent's efforts, not whether he or she has attained "a certain level of progress." (*Id.* at p. 99; *K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393 [" 'reasonable effort to treat' " standard is not synonymous with " 'cure' "].) The court may, however, consider "the *duration, extent and context* of the parent's efforts," both before and after the social services agency has intervened, "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.) Thus, although success alone or even the degree of progress "is not the sole measure of reasonableness, the *measure* of success achieved is properly considered a factor in the juvenile court's determination of whether an effort qualifies as reasonable." (*Id.* at p. 915.)

We review an order denying reunification services for substantial evidence. (*Cheryl P. v. Superior Court, supra*, 139 Cal.App.4th at p. 96; *In re Gabriel K.* (2012) 203 Cal.App.4th 188, 196.) In this regard, we do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or weigh the evidence. Instead, we

draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order and affirm the order even if there is substantial evidence supporting a contrary finding. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 599-600; *In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) On appeal, the parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the court's finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Here, the evidence showed Tami's 15-year history of substance abuse caused her to lose custody of 11 children. Despite receiving reunification services for some of those children over the course of many years, Tami was unable to overcome her drug addiction. After receiving drug treatment, she always relapsed. When Tami learned she was pregnant with T.S., she made a concerted effort to become drug free, and successfully completed a 10-month treatment program. Consequently, T.S. had a negative toxicology for drugs at birth. Tami then participated in voluntary services for a year, but consistent with her pattern, she relapsed even after completing substance abuse treatment. She also engaged in an incident of domestic violence with Bernard. Tami's failure to make reasonable efforts to overcome her drug and other problems was highlighted by her conscious disregard for T.S.'s safety when she breastfed him after smoking crack cocaine and participated in a high-risk drug transaction in his presence. From this, a rational inference can be drawn that Tami's efforts were not reasonable because she had learned nothing in her many attempts at rehabilitation.

Tami asserts she made reasonable efforts because she admitted her poor choices, and has again accepted voluntary referrals to parenting education, substance abuse treatment, detoxification and mental health programs. However, in light of Tami's pattern of drug use, treatment and recidivism, the record supports a finding that her recent participation in various programs and services is both qualitatively and quantitatively insufficient to show she made a reasonable effort to treat her problems.⁴ Under these circumstances, the court was not required to expend the state's limited resources for reunification services on someone who would not benefit from them. (*In re Joshua M.* (1998) 66 Cal.App.4th 458, 474.) Substantial evidence supports the court's implied finding that Tami did not make "a reasonable effort to treat the problems that led to removal" of T.S.'s siblings in the prior dependency proceedings. (§ 361.5, subd. (b)(10) & (11).)

II

Even if a parent has not made reasonable efforts under one of the provisions of section 361.5, subdivision (b), the court retains discretion to order services if it finds, by clear and convincing evidence, reunification is in the child's best interests. (§ 361.5, subd. (c); *In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478.) Tami contends the court abused its discretion by denying her services because reunification is in T.R.'s best interests.

⁴ We disagree with Tami's characterization of her efforts as bringing her "great success." Any success she achieved in overcoming her drug addiction has been, at most, temporary.

A

The parent has the burden of showing reunification services would serve the child's best interests. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227; *In re Gabriel K.*, *supra*, 203 Cal.App.4th at p. 197.) In making its determination, the court considers factors indicating that reunification services are unlikely to be successful, including the parent's failure to respond to previous services. (§ 361.5, subd. (c).) We review the court's findings and order under section 361.5, subdivision (c) for abuse of discretion. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523-524.) In this regard, the juvenile court's order will not be disturbed on appeal unless the court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. When two or more inferences reasonably can be deduced from the facts, we have no authority to reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

B

Here, the evidence showed Tami was not likely to benefit from services because she had numerous opportunities to address her substance abuse and other problems and was repeatedly unsuccessful. Although Tami was able to parent T.S. during the 19 months she remained clean and sober, she could not sustain her drug-free lifestyle.⁵ For

⁵ Tami argues offering her reunification services is in T.S.'s best interests because Bernard, with whom she still has a committed relationship, is receiving reunification services. Thus, Tami asserts, if T.S. is returned to Bernard's care, he will in effect be returned to her care. However, whether Bernard or Tami will ultimately retain their parental rights to T.S. is, at this time, entirely speculative.

Tami, the ongoing risk of recidivism is a very real concern. (*Renee J. v. Superior Court, supra*, 26 Cal.4th at p. 745.) Beyond relapsing, Tami showed a blatant disregard for T.S.'s safety by engaging in domestic violence with Bernard, involving T.S. in a drug transaction and breastfeeding him after smoking crack cocaine. From T.S.'s perspective, he has only an uncertain future with Tami. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317; *In re Joshua M., supra*, 66 Cal.App.4th at p. 474 [purpose of juvenile court law is to ensure the well-being of children whose parents are unable to care for them by affording them another stable and permanent home within a definite period].) Thus, the court could reasonably find it was not in T.S.'s best interests to offer Tami reunification services.

DISPOSITION

The judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

McDONALD, Acting P. J.

AARON, J.