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COURT OF APPEALS, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ELIZABETH C. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061263

(San Diego County
Super. Ct. No. SJ11373BDEF)

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

Elizabeth C. seeks writ review of juvenile court orders terminating her reunification services regarding her children, Dante C., Jesus C.P., Daniela P. and Nayeli P., and setting a Welfare and Institutions Code section 366.26¹ hearing. Jesus R.P. (the father) seeks review of the orders regarding the three younger children, Jesus, Daniela and Nayeli. Elizabeth contends the court erred by terminating her services. She argues the Agency did not provide reasonable services in that no effort was made to address her cognitive impairment, and there was a substantial probability the children could have been returned to her custody by the 18-month date. The father joins in and adopts by reference each of Elizabeth's arguments. We deny the petitions.

FACTUAL AND PROCEDURAL BACKGROUND

In November 2010, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of 12-year-old Dante, seven-year-old Jesus, five-year-old Daniela and two-year-old Nayeli under section 300, subdivision (b), alleging they had been exposed to marijuana use and to domestic violence in the family home. The court ordered the children detained.

Elizabeth had had a previous dependency case from October 2004 until November 2006 involving the three older children based on her methamphetamine and marijuana use. She participated in reunification services in this case, and the children were returned to her custody.

¹ Statutory references are to the Welfare and Institutions Code.

At the jurisdictional hearing in February 2011, the court found the allegations of the petitions to be true and authorized Elizabeth to have a psychological evaluation, which she completed in April. At the dispositional hearing, the court declared the children dependents of the court, ordered reunification services and ordered the children placed with relatives. Elizabeth's services included a psychiatric or psychological evaluation with medication assessment, a domestic violence prevention program, individual therapy, parenting education and inpatient drug treatment.

Elizabeth completed a domestic violence support group program, drug treatment and parenting classes. Her therapist reported Elizabeth has a cognitive impairment. Elizabeth struggled to show empathy and to respond appropriately to her children. The therapist said Elizabeth had trouble getting to appointments on time, looked unkempt and was in a hurry to leave. The therapist was concerned about her sobriety and said Elizabeth could not tell how she would provide for the children and how her substance abuse had affected her relationships with them. The therapist reported Elizabeth was preoccupied with her own needs and said she was getting tired of visiting the children. Elizabeth said she was on the third step of her 12-step program, but had difficulty explaining the meanings of the steps. During a supervised visit, Elizabeth remained seated on a couch, rather than actively engaging with the children. When asked how she would meet the children's needs, she said she would ask them what they needed, and she would discipline them by having them write about their day so she would get to know them or she would get them into activities and into church.

At the combined six- and 12-month hearings on January 13, 2012, the court considered the Agency's reports, testimony from the social worker and the maternal uncle, and argument by counsel. The court found returning the children to parental custody would be detrimental, reasonable services had been offered or provided and there was not a substantial probability of return by the 18-month date. The court terminated services and set a section 366.26 hearing.

Elizabeth and the father petition for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

I

Elizabeth, joined by the father, asserts she received inadequate services because no effort was made to address her cognitive impairment. Elizabeth, however, never brought this issue to the Agency's or the court's attention.

"A party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222.) A "reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] . . . [¶] Dependency matters are not exempt from this rule." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.)

Because neither Elizabeth nor her counsel ever raised the issue of the adequacy of her case plan and services, she has forfeited this issue. Moreover, even were we to

consider the issue, we would find substantial evidence supports the court's finding she was provided with reasonable reunification services.

In determining the sufficiency of reunification services, the role of the appellate court is to decide "whether the record discloses substantial evidence which supports the juvenile court's finding that reasonable services were provided or offered." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' [Citation.]" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) A service plan must take into account the specific needs of the family. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The standard is not that the best possible services were provided, but that reasonable services were provided under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Services provided to Elizabeth included a psychological evaluation, therapy, a domestic violence prevention program, substance abuse treatment and supervised visitation. Elizabeth's therapist was aware of her cognitive impairment and took it into account during her therapy. The therapist explained issues carefully to Elizabeth and asked her to try to explain what she meant when her responses to his questions were not clear. Elizabeth, however, merely repeated the same answers. The social worker testified he explained very clearly to her the requirements of her case plan, the goals he would like her to meet and what he would like to see at her visitations with her children.

Elizabeth's cognitive impairment was sufficiently taken into account in providing her services. The court did not err by finding reasonable services had been provided.

II

Elizabeth, joined by the father, asserts the court erred by terminating services because there was a substantial probability the children could have been returned to her custody by the 18-month date.

Under section 366.21, subdivision (g)(1), a court may continue a case to the 18-month date only if there is a substantial probability the child will be returned to the parent's physical custody and safely maintained in the home by that time. In considering whether to extend the case for 18 months, the court must make all of the following three findings:

"(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

"(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

"(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1).)

Assuming Elizabeth consistently and regularly contacted and visited the children, substantial evidence supports the court's finding they could not be returned to her custody by the 18-month date. Although Elizabeth had participated in services and made some progress, she did not show the capacity and ability to complete the objectives of her

treatment plan and provide for the children's safety, protection, physical and emotional well-being and special needs.

The social worker testified Elizabeth had little insight and she had trouble maintaining sufficient motivation to engage in therapy and consistently visit the children. Her therapist said she was late for appointments and wanted to leave early. She made some progress, including stopping her drug use and leaving a violent relationship, but she had a limited understanding of the special needs of two of her children and was not involved in their schooling.² She had completed a parenting class, but when asked to explain what she had learned, she said only that she was learning to have relationships with the children and tell them, "I love you," and draw with them. She was unable to explain further what she had learned in parenting classes. She said she was on step three of her 12-step program, but could not articulate the meaning of the steps. During her past dependency case she had participated in reunification services and her children were returned to her, but they had to be removed again because of her drug use and domestic violence. There was concern that this would happen again. In view of Elizabeth's lack of ability to show she could provide an adequate and safe home for the children, the court did not err by finding there was not a substantial probability that they could be returned to her custody by the 18-month date.

² Dante had speech and learning disabilities. Jesus had an individual education plan and speech therapy.

DISPOSITION

The petitions are denied. The request for a stay is denied.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

O'ROURKE, J.