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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JACQUELINE C.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061394

(San Diego County
Super. Ct. No. EJ3247)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Gary M. Bubis, Judge. Petition granted; stay vacated.

Jacqueline C. seeks review of a juvenile court order setting a hearing under Welfare and Institutions Code section 366.26.¹ Jacqueline challenges the finding she was offered or provided reasonable reunification services. We grant the petition.

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

FACTUAL AND PROCEDURAL BACKGROUND

Nicholas C., who is now 11 years old, is diagnosed with lennox-gastaut syndrome, a form of severe epilepsy that is usually accompanied by mental retardation. Nicholas suffers from intractable seizures, requiring a complex medication regimen. His Full Scale IQ of 41 places him within the range of moderate mental retardation. Nicholas displays serious behavioral problems, including aggression, tantrums and running away, and functions at an emotional and psychological age of a two- to four-year-old child.

During his early years, Nicholas's needs were neglected by his biological mother, and he and an older sister, K.C., were removed from the mother's care by Michigan social services in 2006. Their 18-year-old sister, Jacqueline, who was living in California, returned to Michigan to attempt to gain custody of her siblings. In 2007, Michigan social services placed six-year-old Nicholas with Jacqueline. Six months later, after determining that Jacqueline could meet Nicholas's needs, the agency also placed 14-year-old K.C., who was seven months pregnant, with her. Jacqueline and her husband, who were newly married, initiated adoption proceedings. After Jacqueline's husband died suddenly of a heart attack, Jacqueline proceeded with her siblings' adoptions, which were final in March 2009.

In April 2009, Jacqueline moved back to San Diego with her children and one-year-old grandchild. She was the sole provider for the family. In June K.C. gave birth to her second child. Jacqueline began to have debilitating migraines.

In April 2010, Jacqueline sought emergency assistance for Nicholas's destructive and violent behaviors. A case manager came to her home three times. Nicholas appeared to act

appropriately. The case manager offered in-home therapeutic behavioral services to Jacqueline which she declined, stating she did not want someone in her home five hours a day.

In May the San Diego County Health and Human Services Agency (Agency) received a referral alleging Nicholas had various cuts, bruises and scrapes of unknown origin. During its investigation, the Agency learned that Nicholas had tried to set Jacqueline on fire, threatened her with a knife and continually ran away from home, sometimes jumping out a second story window. Nicholas urinated and defecated in his bedroom, which had not been cleaned. He had destroyed most of the furniture in the home.

Jacqueline said she was normally able to deal with Nicholas's behaviors but had been bedridden for several weeks. The family received community services in Michigan and San Diego but those services did not ameliorate Nicholas's behaviors. Jacqueline later acknowledged she was depressed, anxious and had feelings of hopelessness.

The Agency detained Nicholas in protective custody at Polinsky Children's Center and initiated dependency proceedings. In August 2010, the court sustained the section 300 petition and removed Nicholas from Jacqueline's custody. Jacqueline's case plan required her to participate in therapy and parenting education classes. Therapy was expected to help Jacqueline deal with issues involved in caring for a child with numerous physical and mental problems and develop coping strategies for stress. Through parenting education, Jacqueline was expected to be able to demonstrate a parental role and knowledge of child development, respond appropriately to the child's verbal and nonverbal signals and put the child's needs ahead of her own.

Jacqueline had unsupervised visitation with Nicholas until January 2011, when the social worker learned that Nicholas had left Jacqueline's home while she was in the bathroom. Jacqueline told the social worker that therapy and parenting classes were not helpful to her. She had completed parenting classes when she adopted Nicholas. The classes were not relevant to Nicholas's issues.

The Agency was unable to locate a suitable foster home placement for Nicholas until January 2011, when it placed Nicholas with foster parents who were specially trained to meet the needs of medically fragile children and children with behavioral issues. A behavioral specialist, Dr. Joseph Schmidt, was assigned to work with the foster family to develop strategies to manage Nicholas's aggressive behaviors and tantrums, which increased when he changed placements and schools. Dr. Schmidt noted that the extent and severity of Nicholas's dysfunction upon placement in the foster home exceeded what typically was manageable within foster home settings.

The six-month review hearing was held on March 18, 2011. The court found that reasonable services were offered or provided and continued services to the 12-month review hearing. As before, the case plan required Jacqueline to participate in therapy and parenting education classes. Jacqueline's therapist said Jacqueline had a fair amount of denial about the protective issues and her ability to meet Nicholas's needs without assistance.

In a report prepared in July for the 12-month status review hearing, social worker Belinda Radovich reported that Jacqueline was no longer participating in parenting education services because she did not believe the service provider understood Nicholas's behaviors. Jacqueline had limited visitation with Nicholas during the previous review

period. The foster mother supervised visits until April. The Agency recently submitted a request for visitation and transportation services and encouraged Jacqueline to increase visitation with Nicholas and set a regular schedule. Jacqueline said she would like additional assistance from providers who were familiar with Nicholas's behaviors.

Jacqueline did not attend therapy from June 20 to September 9 and from November 1 to December 1, 2011. There was a gap in therapy authorization payments from July 1 to July 22. Social worker Radovich was not able to assess Jacqueline's progress in therapy because the provider's treatment plan did not pass TERM² team review.

The case was assigned to social worker Helen Levinsky in July 2011. There were no visitation services in place when she received the case. Levinsky supervised a visit between Nicholas and Jacqueline. Jacqueline was patient and affectionate with Nicholas and they enjoyed spending time together. Due to scheduling difficulties, weekly visits did not start until August 21.

Levinsky made a referral to Fred Finch Wraparound Services program (Finch or the Finch program) to work directly with Jacqueline and Nicholas, and to Dr. Schmidt to provide services to Jacqueline similar to those he provided to the foster family. However, Dr. Schmidt declined to work with Jacqueline, citing a conflict of interest because the primary service recipients were Nicholas's foster parents. The Finch program, which was

² TERM is an acronym for Treatment and Evaluation Resources Management, a mental health program developed under the direction of the San Diego County Board of Supervisors. Its purpose is to provide oversight of mental health services for children in the dependency and delinquency systems. One of its central functions is to conduct ongoing quality review of therapy treatment plans and evaluation reports prepared for juvenile court cases. (San Diego Behavioral Health Network of Care, <http://sandiego.networkofcare.org/mh/resource/term_docs.cfm>, as of Aug. 9, 2012.)

scheduled to begin the week of August 23, was not fully implemented until late October due to problems arranging Nicholas's transportation.

Jacqueline also asked Levinsky to set up conjoint therapy with Nicholas, which began in August. The therapist included the foster mother in the sessions but they were not productive. Levinsky terminated conjoint therapy, provided referrals to other conjoint therapists to the foster mother, referred Jacqueline to regional center support groups and requested Parent Child Interaction Therapy (PCIT) for Jacqueline and Nicholas. PCIT lost the application and its service did not begin until early December. The Agency then had problems transporting Nicholas to PCIT.

In November the Agency changed its recommendation to terminate family reunification services after Nicholas ran toward a parking lot during a visit with Jacqueline. The case aide supervising the visit was able to stop Nicholas from running into the parking lot. He did not believe Jacqueline reacted quickly enough to keep Nicholas safe. Social worker Levinsky stated that although Jacqueline was appropriate with Nicholas during visits, she did not demonstrate an ability to control his behavior and keep him from running away. Nicholas's aggressive behaviors were worsening and appeared to be linked to visits with Jacqueline.

The contested 12-month review hearing was held on January 27, 2012. The court admitted the Agency's reports and Jacqueline's exhibits in evidence, and heard testimony from Jacqueline; the case aide who stopped Nicholas from running into a parking lot during a visit; social worker Levinsky; Nicholas's foster mother; and Holly Nelson, M.S.W., a social worker with the Finch program.

Jacqueline testified she worked from 25 to 30 hours a week. Her work hours varied, and she did not always know her schedule in advance. Her responsibilities as the sole caretaker for her daughter and grandchildren also made it difficult to schedule appointments. In March 2011, she told the social worker she was available on Tuesday and Thursday afternoons. The social worker set up visitation on Mondays and Wednesdays.

Jacqueline said social worker Levinsky was more responsive than the other social workers who had been assigned to the case. PCIT was very helpful. The therapist had her do things with Nicholas that she would have never thought to do with him and taught her to be careful with the instructions she gave him. Finch helped her understand the reasons for Nicholas's behaviors. They worked on skills together. Nicholas did not display any problematic behaviors during visits in the last month.

The foster mother testified Nicholas had been in her home a little more than a year. During his first month, Nicholas made three or four attempts to run away. The foster mother had an alarm system in her home. On two occasions, Nicholas tried to run while they were out. The foster mother grabbed his belt as he ran past her. He had been aggressive toward the other children in her home within the last few weeks.

The foster mother supervised some visits between Jacqueline and Nicholas. Jacqueline was always appropriate with Nicholas. However, Nicholas had tantrums before and after the visits. The foster mother stopped supervising visits because Nicholas's tantrums in the car presented a safety concern.

Levinsky testified Jacqueline generally had good skills when she visited Nicholas. The issue was consistency and working with support systems and resources. Nicholas acted

up before and after visits, but the visits themselves went well. Jacqueline rejected a number of visitation times before accepting Sunday mornings. Levinsky tried to secure a second weekly visit for Jacqueline, but the visitation centers did not permit visits to take place outside the region where the child lived. In October Levinsky arranged for a second weekly visit through the Finch program. Jacqueline also had PCIT with Nicholas once a week.

Holly Nelson, a social worker with the Finch program, assisted Jacqueline with safety planning, strength assessment and finding community support. Jacqueline was receptive to services. Nelson received the case on August 30. There were a lot of barriers with Nicholas's transportation, and regular sessions did not begin until late October. Nelson did not have any concerns about Nicholas's and Jacqueline's interactions with each other. They had a loving relationship. Jacqueline intervened appropriately when Nicholas walked toward a car in a parking lot.

The court found that unlike many parents in dependency cases, Jacqueline was not addicted to drugs or abusive to her children. She was young and had taken on very challenging responsibilities. However, caring for Nicholas was a full-time job, requiring "a very special person" with "very special skills." The evidence clearly showed that Jacqueline was overwhelmed with Nicholas's care. The court found that "at certain times there were fits and starts and a little bit of confusion" in providing services; however, in view of the circumstances, reasonable family reunification services were provided. The court terminated family reunification services and set a section 366.26 hearing.

Jacqueline petitioned for review of the juvenile court's findings and orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) She asks this court to vacate the

findings and orders terminating reunification services and remand the case with orders to provide six additional months of family reunification services. This court issued an order to show cause, the Agency responded and the parties waived oral argument. On May 22, 2012, this court issued a stay of the section 366.26 hearing.

DISCUSSION

A

The Parties' Contentions

Jacqueline contends she did not receive reasonable family reunification services. Specifically, she points to the three-month lapse in therapy, the problems transporting Nicholas to service appointments and visits and the delay in offering PCIT. Jacqueline asserts the Agency did not inform her about Nicholas's medical appointments and disregarded the demands of her work schedule when making appointments and visits. She argues the "sub-par" services that were offered or provided to her during the review period were not offset by a few months of more appropriate services.

Nicholas joins in Jacqueline's briefing. He contends that by the time of the six-month review hearing, the Agency had the knowledge and time to have structured an appropriate reunification plan to meet his complex needs. Instead, the Agency merely continued "its cookie cutter plan" of therapy and parenting education, and later improvised by adding conjoint therapy, the Finch program and PCIT. Nicholas requests that this court remand the matter to the juvenile court with instructions to provide Jacqueline with the same training foster parents receive to care for a special needs child.

The Agency argues it made a good faith effort to provide reasonable reunification services to Jacqueline. It identified her primary problem as a lack of parenting skills and offered or provided parenting classes, in-home services, conjoint therapy, counseling and Finch services to her. The Agency argues it offered reasonable visitation services to Jacqueline and any problems with visitation were due to her inflexibility. The Agency acknowledges there was a "minor gap" in therapy authorization funding and there were problems with Nicholas's transportation to visits, services and PCIT.

B

Reasonable Services

At a 12-month status review hearing for a child, if the court does not return the child to the physical custody of the parent, the court shall continue the case only if it finds there is a substantial probability that the child will be returned to the physical custody of his or her parent and safely maintained in the home within the extended period of time, or that reasonable services have not been provided to the parent. (§ 366.21, subds. (f) & (g).)

To support a finding that reasonable services were offered or provided, "the record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult" (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) The child welfare agency must make a good faith effort to provide reasonable services responsive to each family's unique needs. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

Reunification services should be tailored to the particular needs of the family. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793.) The adequacy of a reunification plan and the reasonableness of the agency's efforts are judged according to the circumstances of each case. (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

At each review hearing, the court is required to determine the "extent of the agency's compliance with the case plan" in making reasonable efforts to return the child to a safe home. (§ 366, subd. (a)(1)(B).) We review a reasonable services finding to determine if it is supported by substantial evidence. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414.) We do not resolve conflicts in the evidence, pass on the credibility of witnesses or determine where the preponderance of the evidence lies. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) The burden is on the petitioner to show the evidence is insufficient to support the juvenile court's findings. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

C

Substantial Evidence Does Not Support the Finding that Reasonable Services Were Provided

The court found, and the record clearly shows, that Jacqueline was a young parent who had taken on extraordinary responsibilities. Her interactions with Nicholas were described by visitation supervisors, social workers and the foster mother as patient, calm, loving, affectionate and attentive to Nicholas. The court recognized it would take someone with "very special skills" to adequately parent Nicholas.

The Agency's case plan for Jacqueline required her to participate in therapy and parenting education classes. The record shows that Jacqueline was not timely provided with training and education specifically tailored to be able to manage Nicholas's behaviors and meet his special needs. The Agency did not offer Jacqueline hands-on skill development to manage Nicholas's unique set of challenges for more than a year, and did not fully implement those services for another two to four months. Further, there were significant deficiencies in the therapy component of her case plan and visitation services.

Jacqueline repeatedly informed social workers that parenting education was not helping her address Nicholas's behaviors. She wanted to work with a treatment provider who was familiar with Nicholas's behaviors. She expressed doubts about therapy. The record does not show that the Agency identified the need to provide Jacqueline with training specific to Nicholas's issues until July or August 2011, when newly assigned social worker Levinsky made referrals to the Finch program and Dr. Schmidt to work directly with Jacqueline and Nicholas. After Dr. Schmidt declined to provide services to Jacqueline, the social worker referred Jacqueline and Nicholas for PCIT therapy. Finch services were not fully implemented until late October. PCIT did not start until December. Finch and PCIT provided Jacqueline with specialized strategies to manage Nicholas's behaviors. Jacqueline was fully engaged with those services and found them helpful in understanding and managing Nicholas's behavior.

Jacqueline also argues services were not reasonable because there was a three-month lapse in therapy services. The reason for the lapse is more significant than the interruption in the service. After participating in therapy for approximately one year, Jacqueline's

treatment plan was rejected by the TERM team. The Agency did not provide the therapist with clinical information concerning Nicholas's condition and behaviors until August 2011. In the initial report prepared for the 12-month review hearing, social worker Radovich said she was unable to determine whether Jacqueline had made any progress in therapy because the provider's treatment plan did not pass TERM team review. Providing therapy to a parent without an approved treatment plan to resolve the protective issues is not reasonably calculated to remedy the problems that led to child's continued removal from the home. (Cf. *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

Further, the record does not show that Jacqueline was consistently offered or provided with reasonable visitation services. While we appreciate the high demand for limited visitation resources, the agency must make a good faith effort to provide services responsive to each family's unique needs. (*Mark N. v. Superior Court, supra*, 60 Cal.App.4th at p. 1010.) Because of her family responsibilities, including the fact she was the sole support of her daughter and grandchildren, Jacqueline's schedule was relatively inflexible.³ The burden is on the Agency to make reasonable efforts to assist the parents in areas where compliance proves difficult. (*In re Riva M., supra*, 235 Cal.App.3d at p. 414.)

When Jacqueline advised the social worker in March 2011 that she had Tuesdays and

³ Although we determine that a regular, weekly visitation schedule must take the parent's other family commitments into consideration, we are not persuaded by Jacqueline's argument the foster mother and Agency did not consider her circumstances in arranging for Nicholas's medical appointments. Nicholas had approximately nine medical appointments in one year. The record shows that Jacqueline received notice well in advance of the medical appointments and had sufficient time to make appropriate arrangements to attend. In view of the complexity of considering available appointment times, Nicholas's medical needs, the foster mother's schedule and Jacqueline's schedule, it is reasonable to expect a parent to make adjustments to her schedule to accompany her child to the doctor every month or two.

Thursdays available for visitation, the social worker scheduled visits on Monday and Wednesday. In August, after Jacqueline's attorney reminded the social worker that Jacqueline worked until 4:00 p.m., the social worker scheduled visits at 3:15 p.m., requiring Jacqueline to commute across town, and criticized her for being late to visits or declining them.

The efforts made by social worker Levinsky after she was assigned to the case underscore the earlier deficiencies in providing reasonable visitation services. From approximately April, when the foster mother declined to supervise visits, until late August, when Levinsky implemented visitation services, there were no regular visitation services in place. Although it required a dedicated effort on her part, Levinsky was able to provide visits to Jacqueline once a week by August, twice a week by October and three times a week by December. She also arranged for Nicholas's transportation, examined alternative visitation arrangements and was responsive to Jacqueline's concerns about her family's needs.

In viewing the efforts the Agency made after the six-month review hearing to reunify this family, we conclude that reunification services were not reasonable. (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) Jacqueline's case plan was not carefully tailored to provide training, education and services to the parent of a special needs child. Her therapist's treatment plan did not pass TERM team review. Although we recognize social worker Levinsky's efforts to provide additional services and expanded visitation services to Jacqueline, the previous lack of services and visitation appropriate to the family's needs, and the "fits and starts" in implementing the additional services, necessitate reversal of the

reasonable services finding. There is not substantial evidence to support the finding that the Agency offered or provided reasonable family reunification services to Jacqueline.

DISPOSITION

Let a writ of mandate issue directing the juvenile court to vacate its findings and order terminating reunification services and setting a permanency planning hearing under section 366.26. The court is instructed to order the Agency to develop a case plan that provides Jacqueline with comprehensive, specialized training for caregivers of children with special needs, and provide other reasonable services to her, including visitation, for a minimum of six months. The stay issued May 22, 2012, is vacated.

IRION, J.

WE CONCUR:

MCINTYRE, Acting P. J.

AARON, J.