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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

BETHANY V.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D061754

(San Diego County
Super. Ct. No. NJ11814D)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Blaine K. Bowman, Judge. Petition denied.

Bethany V. contends the court erred when it set a hearing to select and implement a permanency plan for her daughter, S.V., under Welfare and Institutions Code section 366.26.¹ We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2011, S.V., then two years old, was adjudicated a dependent of the juvenile court under section 300, subdivision (b). S.V.'s mother, Bethany, had a 25-year history of drug addiction as well as a history of domestic violence with S.V.'s father, G.V.² The case arose when police stopped G.V., who was driving erratically with Bethany, S.V. and other children in his car, and found hashish, marijuana and drug paraphernalia, including a methamphetamine pipe, within the children's reach. S.V. was sitting in an unrestrained booster seat.

Bethany had been convicted on various drug charges and registered as a narcotic offender in January 2001. In addition to S.V., Bethany had five other children. She was involved in dependency proceedings from 1999 to 2001 and 2007 to 2008. Bethany received family reunification services in those cases.

When S.V. was detained in protective custody, she was dirty and unkempt. She was not wearing a diaper or underwear under her dress. S.V.'s paternal grandfather said the family was living in squalid conditions and the children often complained they were hungry.

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

² G.V.'s court-appointed counsel determined there were no viable issues for review and did not file a writ of mandate under California Rules of Court, rule 8.452.

On one occasion, the grandfather found S.V. alone in the swimming pool. Bethany was inside the home sleeping.

At the dispositional hearing, the court ordered the San Diego County Health and Human Services Agency (Agency) to offer or provide a plan of family reunification services to Bethany. The case plan required Bethany to participate in a domestic violence treatment program; individual counseling, to start only after Bethany had been clean and sober for 30 days; a psychological evaluation; parenting education; and substance abuse services, to include Alcoholics Anonymous/Narcotics Anonymous meetings, random drug testing and a residential treatment program. The court ordered liberal, supervised visitation.

In a report prepared for the six-month status review hearing dated February 14, 2012, the Agency recommended the court terminate reunification services and set a section 366.26 hearing to select and implement a permanency plan for S.V. The social worker reported that she contacted Bethany on August 22, September 7 and 14, 2011, and January 7, 2012, to discuss services. To the best of the social worker's knowledge, Bethany did not participate in any services offered to her by the Agency. Although Bethany missed a number of visits, she generally visited S.V. for two hours every other week. Bethany was appropriate and active when she interacted with S.V.

In April, the social worker filed an addendum report stating Bethany had been incarcerated and was not able to visit S.V. After her release, Bethany relocated to Imperial County. Bethany had an on-demand drug test in March and did not test positive for any substances.

The six-month review hearing was held on April 9, 2012. The social worker testified that S.V. had been placed with a paternal relative since the beginning of the case. Currently, Bethany was living with her mother and father. She was thinking of returning to Imperial County. In March, Bethany had entered a substance abuse rehabilitation facility and was on lockdown for 30 days. She was then excused from the program for a few weeks to handle court matters. She would be able to return to the program. The social worker said Bethany did not engage in services offered by the Agency. She did not participate in a domestic violence treatment program, parenting education classes or a psychological evaluation. Overall, her visitation with S.V. was sporadic.

The court found that Bethany did not take advantage of available services. Her recent visitation with S.V. was regular. However, earlier, her visits with S.V. were sporadic. The court found that Bethany did not make substantive progress with her case plan and there was not a substantial probability of returning S.V. to her care by the date of the 12-month status review hearing in August 2012. The court terminated family reunification services and set a section 366.26 hearing.

Bethany petitions for review of the court's order under California Rules of Court, rule 8.452. She requests this court reverse the order setting a section 366.26 hearing. This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

A

The Parties' Contentions

Bethany contends the court erred when it terminated her reunification services. She argues that once she was able to stabilize her circumstances by moving away from San Diego County, she began making progress with her case plan and her visitation with S.V. was more regular. Bethany contends the Agency relied too heavily on her past problems instead of recognizing her ability to work well with social workers and abide by the terms of her case plan.

B

Legal Principles and Standard of Review

At the six-month status review hearing, if the child was under three years of age on the date of the initial removal, as here, the court may schedule a hearing pursuant to section 366.26 if it finds by clear and convincing evidence the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan. If, however, the court finds there is a substantial probability the child may be returned to his or her parent within six months or that reasonable services have not been provided, the court is required to continue the case to the 12-month review hearing. (§ 366.21, subd. (e).)

We must affirm an order setting a section 366.26 hearing if it is supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.)

"When a trial court's factual determination is attacked on the ground that there is no

substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether, *on the entire record*, there is substantial evidence, contradicted or uncontradicted, which will support the determination" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 873-874; *Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.)

C

Substantial Evidence Supports the Court's Findings

The court found that Bethany failed to participate regularly and make substantive progress in a court-ordered treatment plan, and further found that Bethany did not regularly visit or contact S.V. On review, Bethany does not show the evidence is insufficient to support the court's findings. (§ 366.21, subd. (e).)

In her writ petition, Bethany acknowledges she did not participate in services or regularly visit S.V. until she moved to Imperial County. This did not occur until March 2012, approximately *seven* months after the dispositional hearing. The social worker stated that Bethany did not enroll in a domestic violence treatment program or parenting education. There is no indication in the record to show Bethany participated in a psychological evaluation or individual therapy. The record shows only that she was on "lockdown" in a substance abuse treatment center for 30 days, and then left the facility for several weeks to "handle court matters."

Bethany's argument the court erred when it set a section 366.26 hearing is not persuasive. The uncontroverted evidence, which Bethany acknowledges, shows that Bethany did not participate regularly and make substantive progress in her court-ordered treatment plan during the six-month reunification period.

DISPOSITION

The petition is denied.

NARES, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.