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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

LUZ V.,

Petitioner,

v.

THE SUPERIOR COURT OF IMPERIAL
COUNTY,

Respondent;

IMPERIAL COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Real Party in Interest.

D061863

(Imperial County
Super. Ct. Nos. JJP02533, JJP02534 &
JJP02535)

PROCEEDINGS for extraordinary relief after references to a Welfare and Institutions Code section 366.26 hearing. Christopher Yeager, Judge. Petition denied; request for stay denied.

Luz V. seeks writ review of juvenile court orders denying reunification services regarding her children, A.C., D.C. and J.C. (together the children), and referring the matter to a Welfare and Institutions Code¹ section 366.26 hearing. She contends insufficient evidence supports the court's finding that the provisions of section 361.5, subdivision (b)(13) applied to deny services to her. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On January 5, 2012, the Imperial County Department of Social Services (the Department) petitioned under section 300, subdivisions (b) and (g) on behalf of the children. On January 3, 2012, the children's maternal grandmother (the grandmother) reported that Luz had left the children in her home for four days without making any arrangements for their care. The grandmother and the maternal aunt (the aunt) said Luz often left the children with them and then disappeared for up to four days at a time. They also said when Luz was with the children she constantly yelled, swore and hit them, and her behavior was becoming erratic as it had been in the past when she was using drugs. The court ordered the children detained.

The social worker reported Luz had participated in programs in the past because of allegations the children were being neglected. The social worker's report stated Luz's extensive history of leaving the children without making arrangements for their care was attributed to her use of methamphetamine and this problem had been addressed through voluntary and court-ordered services.

¹ Statutory references are to the Welfare and Institutions Code.

Luz admitted to the social worker that she had used methamphetamine on January 2 and 5, 2011. Tests of A.C. and D.C. showed the presence of methamphetamine and amphetamine. Luz said she began using marijuana at age 14 and was "hooked" on methamphetamine by age 15 or 16. She said she had used the drug off and on since that time, had become clean in 2011 after participating in a faith-based program, but then started using again and had been using off and on since then.

At the jurisdictional hearing, the court found the allegations true as amended. The Department recommended offering no services to Luz because she had relapsed less than six months after completing her last program, and during the current case she had followed through with only one of the programs referred to her, and she left that program after one week. At the dispositional hearing, Luz admitted recently using methamphetamine.

After considering the testimony and other evidence and argument by counsel, the court denied reunification services for Luz under section 361.5, subdivision (b)(13) and set a section 366.26 hearing to select permanent plans for the children.

Luz petitions 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

Luz asserts insufficient evidence was offered to show that section 361.5, subdivision (b)(13) applied to deny services to her. She argues there was not substantial evidence that she resisted court-ordered treatment during the three years immediately

before the filing of the petition as required by the statute, and the court did not offer evidence of the services she had received during the previous dependency case. She further argues a brief relapse does not constitute a resistance to treatment, and there was no substantial evidence she has a history of extensive, abusive and chronic drug use.

When a child is removed from a parent, the parent must be offered reunification services unless a statutory exception applies. (§ 361.5, subd. (a).) The juvenile court is not required to provide reunification services for a parent described by one of the statutory exceptions unless the court finds by clear and convincing evidence that reunification is in the best interests of the child. (§ 361.5, subds. (b) and (c); *In re William B.* (2008) 163 Cal.App.4th 1220, 1227.)

Section 361.5, subdivision (b)(13) provides reunification services need not be provided to a parent when the court finds by clear and convincing evidence:

"That the parent . . . of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

Not succeeding in drug treatment during the years before the child is removed from parental custody is considered resisting drug treatment within the meaning of section 361.5, subdivision (b)(13). (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 383; *In re Levi U.* (2000) 78 Cal.App.4th 191, 200.) "A parent 'can passively resist [treatment] by participating in treatment but nonetheless continuing to abuse drugs or alcohol, thus

demonstrating an inability to use the skills and behaviors taught in the program to maintain a sober life.' [Citation.]" (*Karen H. v. Superior Court* (2001) 91 Cal.App.4th 501, 505.) A return to chronic, regular drug use is not a simple relapse, but a resumption of drug use showing a resistance to treatment. (*In re William B., supra*, 163 Cal.App.4th at p. 1230; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73.)

The record shows Luz has a history of an extensive, abusive and chronic use of drugs. She admitted she began using marijuana at age 14 and methamphetamine at 15 or 16. The detention report attributed her history of abandoning her children to her use of methamphetamine, and she had received court-ordered family maintenance services to "alleviate similar circumstances." The social worker testified the basis of this case was Luz's drug use and her relapses caused the children to be removed from her custody on two occasions.

In June 2009, after allegations of neglect, a court-ordered family maintenance case was opened for the family. In July, the children were detained and in September, family reunification services were ordered. In March 2010, the children were detained again, and in May, family reunification services were offered. In September 2010, the court ordered Luz to participate in an additional six months of services and in March 2011, the court ordered another six months of family maintenance services. In September 2011, the dependency was dismissed and jurisdiction terminated. Luz, however, soon returned to drug use.

Luz said she was hooked on methamphetamine until she participated in a faith based rehabilitation program in 2011, but she began using methamphetamine again soon

after jurisdiction was terminated in September 2011. The grandmother and the aunt said they believed she had returned to drug use during the months before the filing of the petition in January 2012 because she had been leaving the children and acting erratically as she had formerly done when she was abusing drugs. Moreover, her use was frequent. She said she had been using on and off since the previous dependency cases ended. Tests showed A.C. and D.C. had been exposed to methamphetamine. Luz said she was not sure how often she used drugs, saying she did not "keep track of all that." But she admitted she had used methamphetamine the week before the hearing. Luz's almost immediate return to using methamphetamine cannot be considered a simple relapse, but a resumption of chronic drug use showing resistance to treatment.

Luz complains the Department did not introduce positive drug tests to the reports and did not attach a negative drug test from February 2012. However, ample evidence supports finding Luz was currently using drugs since she testified she had recently used methamphetamine. Her arguments that the history of her previous cases does not list the allegations and it is unclear what services were offered during her prior dependency case is unavailing. The detention report stated Luz has a history of abandoning her children and not making arrangements for their care, and these problems were attributed to her drug use. She acknowledged she had received court-ordered services during the three years before the present dependency case and the social worker testified the basis of the case was her relapse into drug use. Substantial evidence supports denial of reunification services under section 361.5, subdivision (b)(13).

DISPOSITION

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

HUFFMAN, Acting P.J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.