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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re NICHOLAS R. et al., Persons
Coming Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

DIANA G. et al.

Defendants and Respondents;

NICHOLAS R. et al.,

Appellants.

D061883

(Super. Ct. No. SJ12620A-D)

APPEAL from an order of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

Juvenile court dependents Nicholas R., Marcos R., Jasmine R. and Ivan R.

(together, the children) appeal the six-month review hearing order continuing

reunification services for their parents, Diana G. and Eduardo R. (together, the parents). We affirm.

BACKGROUND

The parents have histories of domestic violence and methamphetamine use. In early August 2011, the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions for seven-year-old Nicholas, five-year-old Marcos, one-year-old Jasmine, and Ivan, who was not quite one year old. The petitions alleged the children were exposed to violent confrontations between the parents. During an argument in the children's presence, Eduardo punched Diana once in the face and 10 times in the head. Diana agreed to follow the Agency's safety plan, but did not obtain a restraining order and allowed Eduardo to move back into the house. In 2005 Eduardo had spent time in custody for domestic violence after he pulled Diana into a vehicle by her hair and hit her on the face and neck while driving with Nicholas in the car.

The children were detained in Polinsky Children's Center, then in the foster home of a maternal great-aunt (the aunt). Upon detention, Marcos tested positive for methamphetamines and amphetamines, and Ivan tested positive for methamphetamines and cocaine. Marcos, Jasmine and Ivan exhibited developmental delays. Ivan's muscle tone was poor and his weight was low. Nicholas reported that Eduardo had physically abused him. Personnel at Nicholas's school said Diana often brought Nicholas to school late; he often wore dirty clothes; and Diana often appeared to be under the influence and sometimes smelled of alcohol.

In late August 2011, the court entered true findings on the petitions, ordered the children placed in a foster home and ordered reunification services for the parents. At the detention hearing and again at the jurisdictional and dispositional hearing, the court admonished Diana that because two of the children were younger than three years old when they were removed from her custody, she would have up to six months to participate in services to prove she could safely parent the children and, after that, her parental rights could be terminated, or the children could be placed in long-term foster care or guardianship. (Welf. & Inst. Code, § 361.5, subd. (a)(3), 3d para.)¹ The parents' reunification plans included individual therapy, domestic violence, parenting programs and substance abuse treatment.

At the outset of this case, Diana continued living with Eduardo and there was further violence. Diana continued her methamphetamine use. She began participating in services, then stopped participating. In November 2011 she entered Serenity House, but was discharged on November 22 for physically attacking another resident. Diana returned to Eduardo. On November 25, she was arrested for fraud and possessing methamphetamine. She was convicted of fraud and jailed. On February 10, 2012, she was released to the four- to six-month KIVA inpatient drug treatment program. At the time of the six-month review hearing in April, Diana was attending a parenting class at KIVA and had attended three sessions of individual therapy and two sessions of a 24-session domestic violence program. The facilitator of the domestic violence program

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

reported Diana had made a "good start." Diana was participating "with a positive an[d] attentive manner," "disclosing well" and "demonstrat[ing] verbally and behaviorally that she wants to do well in [the] program." Diana had 35 days of sobriety and her drug tests were negative. She was in compliance with the program.

Although Eduardo was aware of this case, he initially evaded the Agency because he was afraid of being arrested. He did not contact or visit the children until February 16, 2012. On February 27, he began a 52-week domestic violence class. By the time of the six-month review hearing, he had attended approximately five sessions, but minimized his domestic violence. The instructor said Eduardo's "slowness" and history of special education might explain his poor insight. On March 7, Eduardo began an outpatient substance abuse program. He drug tested twice with negative results. By the time of the hearing, he had 29 days of sobriety, had attended five sessions of a parenting class and was doing well.

The children, who now ranged in age from one and one-half years to eight years old, remained with the aunt. She was willing to care for them as long as needed, but was unable to provide a permanent placement in light of her age and her husband's health. The Agency had been unable to find other "concurrent planning" relative caretakers. The aunt said Diana was "very smart," and with help she would "be the mom that her children deserve." The parents' visitation was irregular, and Diana was unable to manage the children's behavior.

The children had special needs. Marcos was aggressive and had been removed from his after school program for hitting a staff member, but his behavior had improved with the aunt's guidance. Jasmine appeared much happier than she had at the outset of the case, and although she still had trouble speaking, she was able to "speak somewhat." She was "on the autism spectrum." Ivan's activity had increased greatly, and he was doing very well. Nicholas had an Individualized Educational Program to address his reading and writing deficits, and Marcos had one to address a myriad of problems.

On April 5, 2012, over the objections of the children's counsel and the Agency, the court continued the parents' reunification services until the 12-month review hearing, to be held on August 16. The court stated the parents had "tried" and cited their days of sobriety. The court noted the positive remarks of the facilitator of Diana's domestic violence program, praise that was unusual in an initial progress report. The court found that Eduardo "did come in eventually," then "got off to a good start." The court decided it would "take a chance on [the] parents," but warned them that if they missed one drug test, had a positive test, missed a therapy appointment, were seen together or had another violent incident, the Agency would file a section 388 petition and the court would terminate services. The court asked the Agency to find "a more intensive parenting class" that would help the parents to understand the children's developmental issues and would teach Diana to manage the children's behavior.

DISCUSSION

"If the child was under three years of age on the date of the initial removal, or is a member of a sibling group . . . , and [at the six-month review hearing] the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a [section 366.26] hearing If, however, the court finds there is a substantial probability that the child . . . may be returned to his or her parent . . . within six months . . . , the court shall continue the case to the 12-month permanency hearing." (§ 366.21, subd. (e), 3d para.) Here, because the 12-month date was approximately four months away rather than six, the court was to "consider only what the impact of *those* four months of services would be on the parent[s] and [children]" (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846.) The court impliedly found there was not clear and convincing evidence the parents "failed to participate regularly and make substantive progress in" their services, and there was "a substantial probability that the [children] . . . may be returned to" the parents by the time of the 12-month review hearing. (*Id.* at p. 844.)

This is a very close case, as the juvenile court recognized. Had we been the trier of fact, we might well have made a different decision. We cannot say, however, that the court abused its discretion in continuing services. (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 64.) That is, "[w]e cannot say the court's ruling was 'arbitrary, capricious, or patently absurd,' or that no reasonable court would have ruled the same way." (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1139, quoting *In re Geoffrey G.* (1979) 98 Cal.App.3d

412, 421.) The parents had undertaken some work, albeit late, and had made a promising beginning in services. The court decided to monitor the case closely and would not hesitate to change its order if a section 388 petition were filed. The record demonstrates a potential difficulty in finding a permanent placement for this sibling group with special needs, and the court was clearly concerned about keeping the children together. On this record, we cannot conclude it was irrational for the court to provide additional services.

DISPOSITION

The order is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

O'ROURKE, J.

IRION, J.