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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ANGELICA W.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062004

(San Diego County
Super. Ct. No. J518191)

Proceedings for extraordinary relief after reference to a Welfare and Institutions Code section 366.26 hearing. Ronald F. Frazier, Judge. Petition denied. Request for stay denied.

Angelica W. seeks writ review of juvenile court orders terminating her reunification services regarding her daughter, Aryanna W., and referring the matter to a Welfare and Institutions Code section 366.26 hearing. (Statutory references are to the Welfare and Institutions Code.) She contends the court abused its discretion by terminating her services, and there was not substantial evidence to support the court's finding there was a substantial likelihood she would not reunify with Aryanna. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Three-year-old Aryanna was taken into protective custody in August 2011 when Angelica was hospitalized because of mental illness, including depression and ideas of suicide. Angelica admitted using alcohol and marijuana. She is a military veteran. She had previously been admitted to a hospital in May 2010 because of suicide ideation and a plan to overdose. In 2008, when Aryanna was four months old, the San Diego County Health and Human Services Agency (the Agency) had provided voluntary services to Angelica after she had left Aryanna home alone for approximately one hour. Angelica and Aryanna's father had separated before Aryanna's birth and he had not seen Aryanna since she was three months old. Angelica vacillated between wanting to try to reunify with Aryanna and thinking Aryanna would be better off in an adoptive home.

The Agency petitioned on Aryanna's behalf under section 300, subdivision (b). Angelica submitted to the allegations, the court found them to be true, declared Aryanna a dependent of the court, ordered her placed in foster care and ordered reunification services. Angelica's case plan included counseling and medication management at the

Veterans' Administration (VA) Hospital, a parenting course and substance abuse treatment.

On August 9, 2011, Angelica was released from the hospital. Her discharge plan advised her to meet with her psychiatrist once each week, attend a substance abuse support group through the VA once each week, attend individual therapy and take anti-depressant medication.

In October Aryanna was reintroduced to her father and began having visits with him. However, he then stopped visiting. In January 2012, Angelica said she wanted to relinquish her parental rights, but by February had changed her mind and said she wanted to try to reunify.

For the six-month review hearing scheduled for February 2012, the Agency petitioned under section 388, subdivision (c) requesting that Angelica's services be terminated because of her inconsistent visitation and inconsistent participation and progress in services, which was negatively affecting Aryanna. Although Angelica had participated in some services, she was terminated from therapy for not attending regularly and she did not appear to understand that her inconsistent visitation and inability to make Aryanna her top priority was harming Aryanna.

After a hearing on May 14, 2012, the court granted the Agency's section 388, subdivision (c) petition, terminated the parents' services and set a section 366.26 hearing to determine a permanent plan.

Angelica petitions for review of the court's orders. (§ 366.28; Cal. Rules of Court, rule 8.456.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

When a juvenile court removes a child who is three years old or older from parental custody, the parents are generally entitled to 12 months of reunification services. (§§ 361.5, subd. (a)(1)(A); 366.21, subd. (f).) However, a party may petition under section 388, subdivision (c) for the court to terminate services before the 12-month date. Section 388, subdivisions (c)(1)(B) and (c)(3) provide the court shall terminate reunification services if it finds the action or inaction of the parent has created a substantial likelihood that reunification will not occur and reasonable services were offered or provided. In making its determination, the court considers factors such as the parent's failure to visit the child or participate regularly and make substantive progress in a court-ordered treatment plan. (§ 388, subd. (c)(1)(B).) It also takes into consideration factors such as the parent's incarceration, institutionalization or participation in a court-ordered residential substance abuse program. (§ 388, subd. (c)(2).) If the court terminates services, it must order that a hearing under section 366.26 be held within 120 days. (§ 388, subd. (c)(4).)

For the court to terminate Angelica's services, it was the Agency's burden to show by a preponderance of the evidence that reasonable services had been offered or provided to her, and to show by clear and convincing evidence that her action or inaction had created a substantial likelihood that reunification would not occur. (§ 388, subs.

(c)(1)(B) and (c)(3). The court's ruling based on its findings is reviewed under an abuse of discretion standard. (*In re M.V.* (2006) 146 Cal.App.4th 1048, 1059.)

Substantial evidence supports the court's finding reasonable services had been offered or provided and Angelica had failed to participate regularly and make substantive progress in her court-ordered treatment plan. Angelica's case plan required her to continue mental health services and medication management and to gain insight through regular therapy into her depression and its impact on her parenting. She was also required to complete a parenting course and participate in substance abuse services by attending a 12-step program at least once each week and submit to random drug tests.

Angelica completed a parenting course. She said she been taking her psychotropic medications and had been drug and alcohol free for nine months. She had been drug and alcohol tested one time. She was not evaluated for a drug and alcohol program until March 27, 2012, and did not begin a 12-step program until April. She then attended four meetings, was on step 2, but did not yet have a sponsor.

However, the central issue of the case was Angelica's mental health concerns, including her depression, and the way this problem was affecting Aryanna. Angelica was diagnosed with depression and she had been overwhelmed by caring for Aryanna. It was recommended that she attend therapy, but from September 9, 2011 until January 2012, she attended only eight therapy sessions and her therapist terminated her from therapy because of her inconsistent attendance. She expressed uncertainty about whether she should reunify with Aryanna. In February she decided she did want to try to reunify, and started therapy with a new therapist on February 8. Her attendance with this therapist

was inconsistent also and she attended only one session of cognitive behavioral group therapy.

The social worker reported Angelica did not show empathy for Aryanna, and, although they had discussed several times how her failing to appear for scheduled visits distressed Aryanna, throughout the case she often cancelled visits or did not show up, causing Aryanna to be angry and disappointed. Angelica did not visit regularly even in the weeks before the May 14 hearing, saying she was too busy with therapy, parenting classes and going to school.

Although Angelica was able to articulate to her therapist that Aryanna had been affected emotionally by her actions and she could discuss ways to help Aryanna's emotional stability, she did not apply this knowledge during visits. She would criticize Aryanna's appearance even before greeting her at visits and at times would ignore her and respond only when Aryanna acted out to get attention. She showed Aryanna little physical affection and had a flat affect. At a visit on April 23, Angelica became very upset about Aryanna's haircut. Aryanna became afraid and began crying and screaming and said she wanted to go home to her foster mother. When the social worker asked Angelica if she wanted to apologize to Aryanna for upsetting her, Angelica responded that she had nothing to apologize for and became more and more agitated. The next day Angelica told Aryanna the foster mother wanted to keep her forever and did not want Aryanna to return home. When the foster mother intervened, Angelica said she could say whatever she wanted.

At the visit on May 7, Aryanna was concerned that Angelica would again begin screaming. She began to cry and said she wanted to go to the foster home. Angelica raised her voice and said, "I'm your mother and if I need to talk to you this way to listen to me, I will do it!"

Aryanna's therapist reported Aryanna was showing signs of depression and attachment disorders. The therapist said when Aryanna began therapy in February 2012, she appeared to be depressed, and had appetite and sleep disturbances and sad affect, including frequent crying and low self-esteem. These symptoms decreased over time, but would temporarily increase when Angelica did not show up for a visit or Aryanna saw other children at the foster home leave with their parents. The therapist said that Aryanna's themes during play therapy were abandonment, rejection and harsh interaction, and at the foster home she engaged in behaviors indicating anxiety, such as picking at scabs until they bled and running so fast that she would fall down. One day at the foster home, Aryanna looked into a mirror and said, "You're ugly, no one wants you. Your mommy doesn't love you, you're no good." The foster mother reported that in the two weeks before the May hearing, Aryanna had low energy, was cold and tired and had little appetite. The therapist opined Aryanna was not used to receiving positive attention. She was concerned Aryanna would become clinically depressed.

Angelica's lack of meaningful participation in services in order to treat her mental health concerns so that she could be a safe and supportive parent to Aryanna created a substantial likelihood that reunification would not occur. Substantial evidence supports

the court's findings under section 388, subdivision (c). The court did not abuse its discretion by terminating Angelica's reunification services.

DISPOSITION

The orders are affirmed. The request for stay is denied.

McINTYRE, J.

WE CONCUR:

HUFFMAN, Acting P.J.

IRION, J.