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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

AMANDA K.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D062864

(San Diego County
Super. Ct. No. EJ3451)

PROCEEDINGS in mandate after referral to a Welfare and Institutions Code section 366.26 hearing. Gary M. Bubis, Judge. Petition denied. Request for stay denied.

Amanda K. seeks review of a juvenile court order setting a hearing under Welfare and Institutions Code section 366.26.¹ Amanda contends that the court erred when it found that she was offered or provided reasonable services. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

Amanda K. is the mother of Z.K., who was born in July 2011.² As a teenager, Amanda had a history of psychiatric hospitalizations. She was diagnosed with Bipolar Disorder and Major Depressive Disorder. In 2009, when Amanda was 18 years old, she began prostituting herself. Amanda lived on the streets until she returned, pregnant, to her mother and father's home.

In August 2011, less than three weeks after Z.K.'s birth, Amanda left Z.K. with his maternal grandparents to go to a party. She was gone for four days. When Amanda returned, she told her mother that she was leaving with Z.K. The maternal grandmother was concerned about Amanda's ability to care for Z.K. and contacted law enforcement authorities for assistance. A sheriff's deputy responded to the call and learned that Amanda was not taking her prescribed psychotropic medication. She did not appear stable and insisted on leaving the home with Z.K. The sheriff's deputy contacted child protective services.

The San Diego County Health and Human Services Agency (Agency) detained Z.K. in protective custody and filed a petition under section 300, subdivision (b), alleging

¹ Further statutory references are to the Welfare and Institutions Code.

² The identity of Z.K.'s father was not established.

that Amanda's mental health condition prevented her from providing regular care to Z.K. In its jurisdictional and dispositional report to the court, the Agency stated that the greatest challenges to reunification were Amanda's unstable mental health condition and her economic circumstances. Amanda had a history of violent outbursts when she did not follow her prescribed medication regimen. The social worker reported that Amanda's history of prostitution and her substance abuse were complicating factors, but there was no evidence to show that Amanda had recently engaged in prostitution or drug use.

The juvenile court sustained the section 300 petition and removed Z.K. from Amanda's custody.³ Amanda's court-ordered case plan required her to continue to meet with her psychiatrist every month, participate in individual therapy with an approved therapist, participate in support services for women leaving prostitution (leaving prostitution program or program) under the therapist's guidance, complete a parenting education class and submit to on-demand drug testing.

In March 2012, at the six-month status review hearing, the Agency recommended that the juvenile court continue services to Amanda for another six-month period. Amanda had been participating in therapy for approximately three months. She did not attend a leaving prostitution program, claiming that doing so would interfere with her visitation with Z.K. and that that particular program was only for women under the age of 18 years. The social worker asked Amanda to find another program. In November 2011, the social worker referred Amanda to in-home family parenting services. Amanda began

³ Z.K. was eventually placed with his maternal grandparents.

participating in parenting services in February 2012. She missed sessions on February 20 and 27. Amanda was provided visits with Z.K. at the local library every day for three to four hours. However, Amanda did not always show up for visits. When she did show up, she was constantly talking or texting on her telephone during the visits. Amanda claimed that she was taking her medication every day, but the maternal grandmother reported that Amanda was not taking her medication.

The court found that adequate and reasonable services had been offered or provided to Amanda, and that Amanda had not made substantive progress in her court-ordered case plan. The court continued services to the 12-month review date.

In March, Amanda was a victim of domestic violence. A boyfriend hit and injured her, and took her cell phone and money. Amanda refused to provide information about another boyfriend to the Agency. The maternal grandmother believed that this boyfriend was Amanda's pimp.

In April, despite repeated reminders by the social worker and maternal grandmother, Amanda did not attend a medical surgical appointment for Z.K. Amanda last visited Z.K. in June.

At the end of June, Amanda was arrested for prostitution. She was released on bail within 24 hours. Shortly after July 4, Amanda went to Las Vegas, in violation of her conditions of release. On August 10, she was arrested at a casino for soliciting and prostitution, and was returned to San Diego and jailed.

The 12-month review hearing was held on October 11, 2012. The Agency recommended that the court terminate family reunification services and set a section 366.26 hearing. Amanda asked the court to extend services to the 18-month review date.

The social worker reported that Amanda last met with her therapist on May 15. Amanda participated in a total of five therapy sessions. The therapist said that Amanda was resistant to treatment and that she did not understand the connection between her activities and risk to Z.K. Amanda did not attend a leaving prostitution program. The social worker said that she had given Amanda referrals to a leaving prostitution program on multiple occasions. When there was some confusion about the program, the social worker advised Amanda to "keep trying and work on it".

The social worker reported that Amanda did not consistently attend her in-home parenting classes and that she had been discharged from that program. The social worker did not know whether Amanda was complying with her medication regimen. She had referred Amanda to the Spring Valley Health Center on many occasions but Amanda never made an appointment. While in jail, Amanda completed an 18-hour parenting education class, and a one-hour class on family, social and emotional development.

The social worker testified that she learned that Amanda was in jail in August. She did not set up any visits between Amanda and Z.K. before the September 12 court date. At court, Amanda requested a visit with Z.K, and the social worker set up a visit between Amanda and Z.K. at the jail.

Amanda testified that her visits were cut off in April 2012 because she had missed three visits due to illness, and had missed two other visits due to transportation problems.

She contacted the social worker about reinstating visitation and the social worker told Amanda that she would look into setting up visits. Amanda said that she did not hear back from the social worker. She met with the in-home parenting service provider over a period of three months, but that service ended at the same time her visits with Z.K. stopped. Amanda said that she attended therapy from January to June 2012. She said that she may have missed a few sessions and claimed that the therapist was not there on several occasions. Amanda testified that in addition to completing a parenting class and a class on family development in jail, Amanda had participated in a child protective services class, and had obtained a food handler's certificate and her GED.

Amanda said that she was in compliance with her medication regimen. She had a referral to the Family Health Center and was waiting to see a psychiatrist who worked at the Center twice a month. On March 14, the social worker referred Amanda to a leaving prostitution program, Survivors of the Streets. Amanda said that she had left three messages at the number the social worker provided but was not able to contact anyone at that number. She said that when she told the social worker that she was having problems contacting the program, the social worker advised her to keep trying.

The court found that Amanda and the social worker were both credible and that their testimony did not conflict. The court commented that the Agency could not force an unwilling or indifferent parent to accept services. The court found that Amanda's case plan was appropriate. Amanda complied with services when she was in jail but when she was on her own, her participation in services was intermittent. The court found by clear and convincing evidence that the Agency had offered or provided reasonable services to

Amanda. At the conclusion of the hearing, the court terminated reunification services and set a section 366.26 hearing for February 5, 2013.

Amanda petitioned for review of the court's order under California Rules of Court, rule 8.452. She requests that 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

Family reunification services play a critical role in dependency proceedings. (§ 361.5; *In re Alanna A.* (2005) 135 Cal.App.4th 555, 563 (*Alanna A.*); *In re Joshua M.* (1998) 66 Cal.App.4th 458; see 42 U.S.C. § 629a(a)(7).) Services "may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children." (§ 300.2.) Reunification services should be tailored to the particular needs of the family. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793 (*David B.*), citing *In re Alvin R.* (2003) 108 Cal.App.4th 962, 972.)

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).) "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.) To support a finding that reasonable services were offered or provided to the parent, "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 "adequacy of reunification plans 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.) If reasonable services are not provided or offered to the parent, the court is required to continue the case for the period of time permitted by statute. (See § 366.21, subs. (e) & (g)(1).)

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 review the evidence most favorably to the prevailing party and indulge in all legitimate and reasonable inferences to uphold the court's ruling. (*In re Misako R., supra*, 2 Cal.App.4th at p. 545.) The burden is on the petitioner to show that the evidence is insufficient to support the juvenile court's findings. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

B

Amanda contends that she did not receive reasonable reunification services. She argues that the Agency did not offer her a psychological evaluation by an Agency-approved, preselected evaluator and help her to enroll in a leaving prostitution education program. She also contends that she was not given adequate visitation services. Finally, Amanda maintains that the social worker did not offer or provide reasonable services, including visitation, to her while she was in jail.

Amanda has forfeited her claim that the Agency denied her reasonable services when it failed to refer her to a psychological evaluation. During the proceedings, Amanda had multiple opportunities to request a psychological evaluation. However, she did not raise the issue in the juvenile court. She therefore cannot claim error in this court. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222 [forfeiture is intended to prevent a party from standing by silently until the conclusion of the proceedings].)

Even if we were to consider Amanda's claim that she was denied a psychological evaluation, we would conclude that the claim is without merit. When Z.K.'s dependency case began, Amanda informed the social worker that she was under the care of a psychiatrist and that she had been prescribed medication for her mental health condition. She was diagnosed with Bipolar Disorder and Major Depressive Disorder. Amanda's case plan required her to continue seeing her psychiatrist on a monthly basis to monitor her use of psychotropic medication, and to participate in individual therapy with an approved counselor. The case plan did not require Amanda to undergo another psychological evaluation unless it was recommended by her therapist. The case plan stated, "While in therapy, the mother will address: any recommendations [for] psychological/psychiatric evaluations, clarification on a mental illness diagnosis, the parent will create a safety plan for how to deal with her mental illness and how to keep this from affecting her own and her child's safety." There is no indication in the record that Amanda did not have access to psychiatric care, that her mental health diagnosis was at issue, or that her therapist recommended another psychological or psychiatric evaluation.

We are not persuaded by Amanda's argument that she did not receive reasonable visitation services. Before Z.K. was placed with his grandparents, Amanda had visits with him two to three times a week. After Z.K. was placed with his grandparents, Amanda was able visit Z.K. daily in a structured public setting. However, she did not always show up for visits. Amanda did not attend a surgical appointment for Z.K. in April. After the six-month review hearing, Amanda did not consistently visit Z.K. At some point in time that is not clear from the record, the Agency imposed supervision requirements on Amanda's visitation. The visitation center terminated Amanda's visitation because she frequently failed to show up for visits. Although Amanda claims that the social worker was not responsive to her requests to reinstate visitation, the record shows that the social worker met with Amanda in May. Amanda visited Z.K. in June. The social worker tried unsuccessfully to contact Amanda in June and July. Amanda was arrested in late June. After she was released on bail, Amanda went to Las Vegas, where she was again arrested for solicitation and prostitution. It is not clear how Amanda expected to visit Z.K. when she was on the run from law enforcement in another state. At a hearing on September 12, Amanda asked the social worker to arrange a visit with Z.K. at the jail, which the social worker did. The record shows that visitation services were reasonable under the circumstances.

Amanda's contention that the social worker did not provide reasonable services to her while she was in jail is without merit. Amanda completed a parenting program and another class while she was incarcerated. She participated in a child protective services program and met with two social workers. Amanda received a food handler's certificate

and completed her GED. It is not relevant that these services were provided to Amanda by another government agency. It is an unwise use of scarce public resources to require the agency to duplicate services that a parent is readily able to access through other providers. (Cf. *Alanna A.*, *supra*, 135 Cal.App.4th at p. 566 ["Resources available to the juvenile court are not unlimited"].)

Finally, as to Amanda's contention that the social worker did not help her enroll in a leaving prostitution program, the record shows that Amanda told the social worker that she did not qualify for the first program to which she had been referred because she was over the age of 18 years. The social worker told Amanda that she should find another program. In March 2012, after Amanda was assaulted, the social worker gave Amanda a referral to another leaving prostitution program, Survivors of the Streets. Amanda testified that she left three messages at that telephone number but was unable to contact anyone at that program. The court found that Amanda's testimony was credible. The social worker encouraged Amanda to "keep trying and work on it" but did not help her enroll in the required service.

The social worker's response to Amanda's unsuccessful efforts to enroll in a court-ordered program does not constitute best practices. The social services agency has an obligation to make reasonable efforts to assist parents in areas where compliance proves difficult. (*In re Riva M.*, *supra*, 235 Cal.App.3d at p. 414.) Once Amanda advised the social worker that she had tried to contact the program on multiple occasions and that no one had responded to her inquiries, the social worker had an obligation to assist Amanda

by contacting that program or by providing referrals to other suitable programs or services.

Although the services provided to Amanda were not perfect, we conclude that they were reasonable under the circumstances. (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.) There is substantial evidence to support the finding that reasonable reunification services were offered or provided to Amanda.

DISPOSITION

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

AARON, J.

WE CONCUR:

McCONNELL, P. J.

BENKE, J.