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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re MICHAEL S., JR., a Person Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

AMBER C.,

Defendant and Appellant;

MICHAEL S., JR.,

Appellant.

D065691

(Super. Ct. No. SJ11285C)

APPEALS from an order of the Superior Court of San Diego County, Kimberlee

A. Lagotta, Judge. Affirmed.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant Amber C.

Jamie A. Moran, under appointment by the Court of Appeal, for Appellant Michael S., Jr., a Minor.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Paula J. Roach, Deputy County Counsel, for Plaintiff and Respondent.

Minor Michael S., Jr. (Michael) and his mother, Amber C., appeal following the six-month review hearing in Michael's juvenile dependency case. Amber contends the court was required to continue her reunification services and abused its discretion by terminating her services. Michael contends the court erred by continuing reunification services for his father, Michael S., Sr. (Michael, Sr.). We affirm.

BACKGROUND

In 2004, Amber gave birth to A.L. Both tested positive for THC and PCP. The San Diego County Health and Human Services Agency (the Agency) accordingly opened a dependency case. A.L. was removed from Amber and placed in foster care. The court ordered reunification services for Amber including drug treatment, drug testing, individual therapy and parenting instruction. Amber appeared to be making progress in services and was allowed unsupervised visitation. In July 2005, Amber relapsed with alcohol and PCP. Her services were terminated. In 2006, Amber's parental rights to A.L. were terminated. In 2008, A.L.'s adoption was finalized. In December 2011, Amber tested positive for amphetamines while she was pregnant with Michael. Michael was born in March 2012.

In early July 2013, the Agency filed a dependency petition for one-year-old Michael. The petition, as later amended, alleged that Amber and Michael, Sr., had been

arrested in Michael's presence. Amber was arrested for possessing methamphetamine. She had a history of substance abuse issues and failed to reunify with another child as a result of her substance abuse. Michael, Sr., was arrested for violating a restraining order that prohibited contact with Amber.

Amber and Michael, Sr., were jailed. Michael, Sr., admitted he had been using methamphetamine about once a week, but claimed he had not done so in the last three or four months. Amber admitted using marijuana but denied using methamphetamine, claimed she did not have a substance abuse problem and refused to participate in drug testing or drug treatment. After a couple of days, Amber was released from jail and her whereabouts became unknown.

Michael was detained at Polinsky Children's Center where he tested positive for amphetamines and methamphetamines.¹ A few days later, he was moved to the home of the relative who had adopted A.L.

By late July 2013, the Agency had learned that Amber had been arrested again and jailed. The Agency was unable to locate her until July 31, when she appeared at a hearing. Amber provided a mailing address, but the social worker was subsequently unsuccessful in contacting her. The social worker called Amber, but Amber did not return the calls, aside from one voice mail message she left in early August.

¹ Michael's older half brother, Amber's son D.W., was also detained at Polinsky Children's Center and was moved with Michael to the relative's home. At the time of the hearing, Michael and D.W. remained in that home. The court set a Welfare and Institutions Code section 366.26 hearing for D.W. (all further statutory references are to the Welf. & Inst. Code), who is not a subject of this appeal.

On August 22, 2013, the court made a true finding on the petition, ordered Michael placed with a relative and ordered reunification services for Amber and Michael, Sr. Services included parenting education, outpatient substance abuse treatment and substance abuse testing.

Amber's progress in services was as follows: In late August 2013, she enrolled in a residential substance abuse treatment program at McAlister Institute (KIVA). She left within a week. In September, she had an intake appointment at a CRASH residential substance abuse treatment program. She did not enroll in CRASH. In October and November, she was arrested five times and was in and out of jail. In November, the social worker gave Amber a list of drug treatment programs and referred her to a substance abuse specialist and a parenting program. Amber did not appear for an intake appointment with the parenting program and did not drug test. In late November, she had her first visit with Michael. In December, she was again arrested and jailed. Although the jail would not allow her to participate in services until she was sentenced, she testified she attended three parenting classes. In January 2014, Michael was taken to the jail for a visit. In February and March, the jail did not allow visits because Amber had assaulted and injured a deputy. Amber testified that on March 14, she was released to KIVA, whose program included parenting classes, relapse prevention classes and drug education.

Michael, Sr.'s, progress in services was as follows: By early August 2013, he had been released from jail and enrolled in the Lighthouse drug treatment program. In September, he had three visits with Michael. In late September, when the caregiver took Michael to the Lighthouse for a visit, she was told that Michael, Sr., had quit the

program. Michael, Sr., was jailed from early October to early November for violating a restraining order. After his release, he failed to appear for four consecutive visits. On November 20, the social worker referred him to a substance abuse specialist and gave him a list of drug treatment programs. The next day, Michael, Sr., met with the substance abuse specialist, who referred him to the Central East Regional Recovery Center drug treatment program and to drug court. Michael, Sr., said he wished to participate in the St. Vincent de Paul drug treatment program, which the specialist did not recommend, and said he did not wish to participate in drug court because it might conflict with his work hours if he found a job. In December, Michael, Sr., enrolled in the St. Vincent de Paul program. In January 2014, he visited Michael twice. In February, Michael, Sr., failed to appear for a visit. On March 18, he was asked to leave the St. Vincent de Paul program after he violated curfew and did not show up for the job portion of the program. Michael, Sr., testified that the day after he was asked to leave St. Vincent de Paul, he asked his probation officer about entering another program; the probation officer gave him the names of two programs; and Michael, Sr., contacted those programs and was placed on waiting lists. Finally, he testified that on the day of the hearing, he met with "the recruiter . . . for drug programs" and agreed to go to an orientation at the Fellowship program the following Monday. Michael, Sr., claimed six months of sobriety.

The six-month review hearing took place on March 28, 2014. The Agency recommended that Amber's and Michael, Sr.'s, services continue for six more months. Michael's counsel asked that services be terminated for both Amber and Michael, Sr.

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 par.)

As is the case with Michael, when a child is younger than three years old on the date of initial removal from the parent's physical custody, reunification services are presumptively limited to six months. (§ 361.5, subd. (a)(1)(B); *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) At the six-month review hearing in such a case, "[s]o long as reasonable services have . . . been provided, the juvenile court must find 'a substantial probability' that the child may be safely returned to the parent within six months in order to continue services. (§ 366.21, subd. (e).)"² (*Tonya M.*, at p. 845.) In order to continue services, the court must also find that the parent "has participated in and made substantive progress with services" (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 63 (*Jesse W.*)). Conversely, if the court finds there is a substantial probability of return to a parent, the court shall continue that parent's services, and if the court finds that

² Amber does not challenge the finding that she was provided reasonable services.

a parent has participated in services and made substantive progress, the court may continue that parent's services. (§ 366.21, subd. (e).)

Here, the court properly found that Amber's participation in services was nil, she had not made substantial progress on her case plan and there was not a substantial probability that Michael could be returned to her by the 12-month date. The court did not abuse its discretion in terminating Amber's services.³ (*Jesse W.*, *supra*, 157 Cal.App.4th at p. 65.)

Amber argues that because the court continued services for Michael, Sr., and set a 12-month review hearing, the court was required to continue her services. This court has held otherwise. (*Jesse W.*, *supra*, 157 Cal.App.4th at p. 49; *In re Katelynn Y.* (2012) 209 Cal.App.4th 871, 877, 881; *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651.) We decline Amber's invitation to revisit the issue.

As to Michael, Sr., the court found that he had been in and out of custody and had "begun and sporadically participated" in services. The court did not abuse its discretion by continuing services for Michael, Sr. (*Jesse W.*, *supra*, 157 Cal.App.4th at p. 64.) Although Michael, Sr., had moved from one program to another, he had sought out substance abuse programs and participated in approximately five months of treatment. He drug tested, and there was no evidence of any positive tests. Thus, the court was

³ Amber argues that the termination of her services was contrary to Michael's best interests. She cites her appropriateness during visits and her testimony that she spent two weeks in residence at KIVA. Her asserted two weeks of participation in drug treatment is de minimus when compared to her lengthy history of drug use, and she only had two visits with Michael. In fact, Amber's appeal is borderline frivolous.

justified in its implied determination that Michael, Sr., had participated in services and made substantive progress.

DISPOSITION

The order is affirmed.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

McINTYRE, J.