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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re I.W. et al., Persons Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.J.,

Defendant and Appellant.

D065726

(Super. Ct. No. J510936-B)

APPEAL from orders of the Superior Court of San Diego County, Kenneth J.

Medel, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Patrice Plattner-Grainger, Deputy County Counsel, for Plaintiff and Respondent.

J.J. appeals a juvenile court order at the 12-month hearing terminating her reunification services concerning her daughters, I.W. and S.W. She contends the court erred by not extending her services to the 18-month date and argues the evidence was insufficient to support the finding there was not a substantial probability she could reunify with the children by that time. She maintains granting her additional services would further the legislative purpose of family preservation. We affirm the order.

FACTUAL AND PROCEDURAL BACKGROUND

J.J. has given birth to six children: four boys and two girls. There have been four dependency proceedings involving her family. J.W. is the father of J.J.'s three younger children: I.W., S.W. and J.W., Jr. None of J.J.'s four sons are in her care. This case concerns only her daughters, I.W. and S.W.

First Dependency Case: March 1995 - July 1997

J.J.'s first three children were born in 1995, 1997 and 1998. The first tested positive for methamphetamine at birth. J.J. participated in reunification services for her first child, but did not reunify with him. Her first three children live with their fathers or their fathers' families, and she has no contact with them.

Second Dependency Case: May 2005 - July 2007

I.W. was born in 2004 and J.W., Jr., in 2005. In May 2005, the San Diego County Health and Human Services Agency (the Agency) petitioned under Welfare and Institutions Code¹ section 300 on behalf of I.W. and J.W., Jr., alleging J.W., Jr., tested

¹ Statutory references are to the Welfare and Institutions Code.

positive for methamphetamine at birth, and there was domestic violence between J.J. and J.W. The juvenile court assumed jurisdiction, and J.J. and J.W. participated in substance abuse treatment and other services; the children stayed in relative care during that time. At the 18-month hearing in November 2006, the court ordered I.W. and J.W., Jr., placed with J.J. and J.W. with family maintenance services. A paternal aunt was eventually awarded guardianship for J.W., Jr.

Third Dependency Case: July 2010 - August 2012

S.W. was born in 2010. On July 27, 2010, the Agency petitioned on behalf of I.W. and S.W. based on J.J. and J.W.'s domestic violence and drug use. The petitions further alleged J.J. yelled at I.W. and hit her. When authorities attempted to take the children into protective custody, J.J. jumped over a fence and fled with them.

In September 2010, I.W. and S.W. were located in J.W. and J.J.'s car. The police also found methamphetamine in a nearby truck that belonged to them. J.W. and J.J. were arrested. The court assumed jurisdiction and ordered the children placed with a nonrelative extended family member. J.J. pleaded guilty to child abduction and child endangerment, and was placed on three years' probation.

J.J. and J.W. were again offered reunification services. J.J. completed services and progressed to unsupervised and overnight visits. J.W. did not complete his domestic violence program. In January 2012, the court ordered I.W. and S.W. placed with J.J. with continued services. In August 2012, the court awarded joint legal custody to both parents and physical custody to J.J. with supervised visits for J.W.

Fourth Dependency Case: December 6, 2012 - Present

On December 6, 2012, the Agency petitioned on behalf of I.W. and S.W., alleging J.J. had left the scene of a traffic accident in an attempt to avoid arrest, leaving eight-year-old I.W. alone in the car. The petitions further alleged J.J. and J.W. had a history of drug abuse and domestic violence, and both were incarcerated and unable to arrange appropriate care. S.W. tested positive for methamphetamine when the children were taken into protective custody. The court sustained the petitions, declared the children dependants, ordered them placed in foster care and ordered services.

J.J. left the scene of the accident because she had been noncompliant with the terms of her probation on her 2010 guilty plea and feared she would be arrested. J.W. said he would no longer pursue a relationship with her, but wanted to gain custody of I.W. and S.W. He completed parenting classes and an anger management program and received his GED while incarcerated.

The children were placed with a nonrelative extended family member. J.J. was incarcerated in central California and not able to have in-person visits because of the distance to the prison. J.W. was released from custody in May 2013. He moved in with the paternal grandmother, began participating in services, obtained employment and had positive visits with the children.

At the six-month review hearing on October 11, 2013, the court continued services for both parents, finding J.W. had made substantive progress with services and J.J. had made some progress. At the 12-month hearing the social worker reported J.J. remained incarcerated and had been participating in the limited services available at the prison.

J.W. briefly relapsed into methamphetamine use, but then began substance abuse treatment and therapy. The social worker and the children's Court Appointed Special Advocate recommended terminating J.J.'s services and continuing J.W.'s services for an additional six months. At the 12-month hearing on March 7, 2014, the court found returning the children to parental custody would be detrimental, and reasonable services had been provided. It found there was a substantial probability the children would be returned to J.W.'s care by the 18-month date, but not to J.J.'s care by that time. It continued services for J.W., but terminated services for J.J.

DISCUSSION

J.J. contends the court erred by not continuing her reunification services to the 18-month date. She argues she has made significant progress in resolving the problems that led to the children's removal, participated in every program available to her at the prison and called the children every one to two days. She claims she showed the ability to complete the objectives of her treatment plan and provide for the children by the 18-month date. She asserts granting her additional services would further the legislative purpose of family preservation because she will continue to be a part of her children's lives, and it is in the children's best interests to give her more time to address her substance abuse issues.

An order terminating reunification services is reviewed for substantial evidence. (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1028.) A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge

in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.)

Under section 366.21, subdivision (g)(1), a court may continue a case to a date 18 months after the child was originally taken into protective custody only if there is a substantial probability the child will be returned to the parent's physical custody and safely maintained in the home by that time. In considering whether to extend the case to the 18-month date, the court must make all of the following three findings:

"(A) That the parent or legal guardian has consistently and regularly contacted and visited with the child.

"(B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home.

"(C) The parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (*Ibid.*)

J.J. did not show she met all three prongs of section 366.21, subdivision (g)(1).

Although she kept in regular contact with the children by calling them at least every other day, she did not show she met the second and third requirements.

J.J. has four other children who are not in her care, and she participated in three earlier dependency proceedings. She has battled substance abuse since she was in her teens. Although she completed past substance abuse treatment programs, she continued to place her children at risk, and two-year-old S.W. tested positive for methamphetamine when she was taken into protective custody. Because of J.J.'s incarceration, she was not

able to participate in any substance abuse treatment by the time of the 12-month hearing. Parental neglect and poor impulse control have been ongoing problems, but she was not able to participate in parenting classes or counseling while in prison. Her release date was just three days after the 18-month date.

Substantial evidence supports the court's decision not to extend court-mandated services because J.J. did not show she has made significant progress in resolving problems that led to I.W. and S.W.'s removal. She has also not demonstrated the capacity and ability to complete the objectives of her treatment plan and to provide for their safety, protection, and physical and emotional well-being.

The court properly took into consideration J.J.'s incarceration and her resultant inability to participate in the provisions of her service plan. J.J.'s reliance on *A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050 is misplaced. In *A.H.*, the father was incarcerated and not scheduled to be released from custody until less than 30 days before the 18-month date. The reviewing court denied his writ petition, concluding the juvenile court had considered all relevant factors required under the statutory scheme, including the barriers to his participation in reunification services while in prison. (*Id.* at pp. 1057-1063.) The court noted providing expeditious resolution for children is a core concern of dependency proceedings, and, although a parent's incarceration must be considered, the statutory provisions do not suggest an incarcerated parent should be excused from complying with a service plan. (*Id.* at pp. 1060-1061.) *A.H.* does not support J.J.'s position.

J.J. also misplaces reliance on *S.T. v. Superior Court* (2009) 177 Cal.App.4th 1009, in which the reviewing court held the juvenile court erred by not realizing it had discretion to continue reunification services for an incarcerated father who had not satisfied all of the criteria of section 366.21, subdivision (g)(1). The court ruled that in exercising its discretion, the juvenile court was required to consider the difficulties the father faced in participating in reunification services because of his incarceration. (*S.T.*, at pp. 1015-1016.) Here, the court took into consideration the barriers to participation in services that J.J. faced in prison. Moreover, her case is distinguishable. In *S.T.*, the father was involved in dependency proceedings for the first time. J.J., by contrast, had been offered reunification services in other cases over several years.

The court stated:

"So if we had a case where we had an isolated -- some isolated incident that gave rise to a dependency case, and the parent was in custody and was doing their best to comply with a service plan, and it wasn't such a long-term issue or problem where we've already had compliance with the service plan and a failure, the case might have a different complexion.

"But here the problems seem to be deeply rooted"

The court did not err by terminating J.J.'s services at the 12-month hearing. Services may be denied to one parent while being provided to the other. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 566.) "[T]he Legislature has recognized that in some circumstances, it may be fruitless to provide additional reunification services." (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 64.) "In such a case, the general rule favoring reunification services is replaced by a legislative assumption that offering services would

be an unwise use of governmental resources.' " (*Id.* at pp. 64-65.) Substantial evidence supports the court's orders terminating J.J.'s reunification services.

DISPOSITION

The orders are affirmed.

McDONALD, J.

WE CONCUR:

McCONNELL, P. J.

HUFFMAN, J.