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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

R.M. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E055206

(Super.Ct.No. SWJ1100034)

OPINION

ORIGINAL PROCEEDINGS; petitions for extraordinary writ. Michael J.

Rushton, Judge. Petitions denied.

Dan Vinson for Petitioner R.M.

Elizabeth A. Wingate for Petitioner J.M.

Pamela J. Walls, County Counsel, and Anna M. Deckert, Deputy County Counsel,
for Real Party in Interest.

Both R.M. (mother) and J.M. (father) (collectively, the parents) seek writ review of the juvenile court's order terminating reunification services and setting a hearing pursuant to Welfare and Institutions Code section 366.26.¹ We find their contentions lack merit so we deny their respective petitions.

FACTUAL AND PROCEDURAL BACKGROUND

Four-month-old P.M. (the child) was hospitalized in January 2011, suffering from a fever, cough, urinary tract infection, and diarrhea. The medical staff was concerned that mother was not feeding the child appropriately and that she did not seem to realize when the child needed to be fed. The child weighed only nine pounds when a child of her age is expected to weigh between 15 to 17 pounds. The child immediately gained weight while in the hospital.

Hospital personnel informed the Riverside County Department of Social Services (Department) about the situation. The Department filed a dependency petition, alleging in part that the child had been diagnosed with "Non Organic Failure to Thrive" because the parents were not feeding her appropriately.

In June 2007, the parents had two children taken into protective custody by Arizona authorities due to issues of neglect. The older girl had a severe diaper rash that caused scarring and discoloration of her skin. The younger girl was very thin and was diagnosed with failure to thrive. After receiving 18 months of services, the parents' rights were terminated. The two children remain placed with the paternal grandparents.

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

In its initial jurisdiction/disposition report, the Department recommended that no reunification services be provided the parents pursuant to section 361.3, subdivision (b)(11), on the ground that they had failed to benefit from the 18 months of services they had received in Arizona. The report noted the issues that brought the family to the attention of the Arizona authorities were similar to the current problems and involved another child who had been diagnosed with a nonorganic failure to thrive, and their parental rights had been terminated as to the two children involved in the Arizona proceeding. After the hearing was continued, apparently because there was a delay in receiving the records of the Arizona case, the Department filed an addendum report that did recommend services be provided.

The juvenile court made the requisite jurisdictional findings. The substantiated allegation as to mother was the failure to adequately meet the child's needs, resulting in a diagnosis of nonorganic failure to thrive. Allegations as to the father also included a history of abusing alcohol and unresolved anger issues. The juvenile court ordered reunification services, which included—at the parents' request—a “hands-on” or “in-home” parenting class.

In the six-month status review report, the social worker concluded that even though the parents had made efforts to complete the case plan, they had not benefitted from those services. The social worker noted that the parents had not accepted any responsibility for the child's removal or her diagnosis with nonorganic failure to thrive. “Additionally, visitation between the parents and the child is poor, they have difficulty adhering to [the child's] feeding schedule, they appear unaware of age appropriate

interaction, and do not appear to be committed to bonding with their child.” The caregivers had provided a feeding schedule regarding when and what to feed the child, but the parents still needed assistance in feeding her. No bonding appeared to be occurring during visits, and the social worker believed the parents were merely biding their time. On several occasions, the parents would place the child in her car seat and have her things packed 30 or 45 minutes before the end of the visits.

When the social worker met with the parents prior to the end of a visit on August 11, 2011, the parents said the child had been fed two hours before. They responded to the suggestion that the child must be hungry by stating, “Yeah maybe,” and handed the social worker a bottle. The parents waved goodbye to the child, who was already in her car seat, and left. The social worker had to change the child’s very wet diaper and feed her. The parents behaved similarly at the end of the September 15 visit when they waved and said goodbye to the child, but did not attempt to hug or kiss her.

In the addendum report of December 2011, the social worker stated that visitation continued to be lacking in quality and that the parents still need to be advised of how and when to feed the child. The social worker reported that she had to request the parents change the child’s diaper at the start of each visit because the child had been in the car for over an hour. She also discussed feeding issues with them. The parents explained that they wait to feed the child until she tells them she is hungry. The social worker explained that they must initiate feeding her because she was only one year old and unable to express that she is hungry.

Mother insisted that there was something wrong with the child and “you guys aren’t doing anything about it.” The social worker replied that the tests indicated that the child “was deemed healthy and developmentally on target.”

The parents indicated that they did not understand why they did not have the child back yet. Mother stated, “I just don’t understand, this is exactly what happened in Arizona. We did everything we were supposed to do.” She added that, “No one told us we had to have excellent visits with [the child] and that we had to benefit from services. . . . We were only told that we had to complete them. . . . Even in the video they showed us at Court, all the video said was that we had to complete our classes and we did. I guess we will just see what the Judge says.”

During the next visit on November 3, 2011, the social worker had to request that the parents change the child’s diaper.

At the contested six-month review hearing, the paternal great-aunt testified that she had supervised visits, and indicated that the parents would feed, change diapers, and play with the child during visits. She never observed them being inappropriate with her. She believed that the parents displayed adequate parenting skills.

Mother’s friend testified that she observed the parents interact with the child during a birthday party lasting five to six hours. She believed that the parents were loving and able to meet the child’s emotional and physical needs during this time.

The parents had completed a parenting class given by Catholic Charities. The assistant clinical coordinator for Catholic Charities of San Bernardino and Riverside Counties testified that the parenting course was not geared for a specific age, but included

information geared mostly for children two to four years old and older. The curriculum assumed the parent and child had an existing attachment and was written at a fourth grade level.

The social worker testified she was aware that the parents' case plans included a hands-on parenting course, but the parents did not qualify for any such program. She investigated a parent-child interaction program, P.C.I.T., but the program only accepted parents who were to reunify within six weeks. Another program provided one-on-one assistance by a public health nurse, but the child had to be placed with a parent before the parent qualified for this service.

The social worker testified that she provided support, direction, coaching, and education regarding parenting techniques, feeding schedules and child developmental stages. The social worker assistant also provided coaching.

The juvenile court terminated services and set a hearing pursuant to section 366.26. It found that the Department had provided reasonable services. Although the court had ordered a hands-on parenting class, no one offered the classes that the parents were asking for. The court believed that the Department did not ignore the court's order, but would have provided such classes if the parents had been able to progress to the point where they could have had unsupervised visits or home visits. In addition, the social worker, as well as her assistant, coached the parents during the visits, and the court concluded she was qualified to provide such coaching.

While the parents had completed most, if not all, of their plan, they had failed to make substantive progress toward resolving the problems leading to removal. "If you

look at the description of what was going on in the hospital in the detention report . . . and then you listen to what was happening in the visits some eight months later, these are virtually identical descriptions of parents who seem oblivious to the needs of the child.”

DISCUSSION

Both parents contend that they were not provided reasonable services. While they acknowledge that services need not be perfect, they complain that the services they received were not tailored to address their unique needs and circumstances. In this case, the central issue was the child’s nonorganic failure to thrive so that the services should have focused on parenting an infant. However, the parenting class that was provided focused on parenting toddlers, age two and up, rather than infants. The class did not address feeding schedules, diaper changing, or bathing an infant. The parents were never provided in-home parenting as ordered by the court. Although the social worker testified she coached the parents on these matters during visitations, the parents object that the social worker was not certified to teach parenting nor was she a licensed nurse or nutritionist. Father points out that the social worker provided coaching four times during the review period, and the social worker assistant coached them only twice.

First, there is substantial evidence to support the finding that the services were adequate. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) The record shows that the Department identified the problems leading to the loss of custody and offered services designed to remedy those problems. (*In re Amanda H.* (2008) 166 Cal.App.4th 1340, 1345.) The fact that the social worker rather than a third party provided the instruction should not obscure the crucial point that the parents received rather extensive hands-on

parenting lessons. They received a feeding schedule from the caregivers as well as specific directions from the social worker about feeding and changing the child. Yet the parents seemed unable to apply these lessons and properly feed and care for the child. They continued to blame the child's weight loss on a medical condition even though doctors found no such condition. While the parents went through the motions of attending classes, counseling, and visitation, their ability to attend to the basic needs of their child had not improved. The court cannot be faulted in concluding that the parents had not made substantive progress in dealing with the very problem that led to the child's detention.

Finally, both parents contend that the juvenile court erred in setting a selection and implementation hearing based on the 12-month review standard rather than the six-month review standard. We find no error and no abuse of discretion. We acknowledge that unlike the situation at a 12-month hearing, when additional services are appropriate only if the trial court finds a substantial probability that the child will be returned in six months, the court may continue services at the six-month hearing if there is a substantial probability that the child *may* be returned—in other words, a substantial possibility. (Cf. § 366.21, subds. (e), (g) with *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 181 (*M.V.*.)

A court abuses its discretion in setting the section 366.26 hearing only if the record establishes that “there is a substantial probability the child may be returned to the parent [within six months], in which case the court *must* continue the case to the 12-month hearing.” (*M.V.*, *supra*, 167 Cal.App.4th at pp. 179-180.) In determining

“substantial probability” of return within the applicable time period, the juvenile court “should consider the following factors along with any other relevant evidence: [¶] a. Whether the parent . . . has consistently and regularly contacted and visited the child; [¶] b. Whether the parent . . . has made significant progress in resolving the problems that led to the removal of the child; and [¶] c. Whether the parent . . . has demonstrated the capacity and ability to complete the objectives of the treatment plan and to provide for the child’s safety, protection, physical and emotional health, and special needs.” (Cal. Rules of Court, rule 5.710(c)(1)(D)(i); see also *M.V.*, at pp. 180-181.) Given the parents’ failure to make any progress after receiving services here, in addition to 18 months of services in Arizona, it is not reasonable to suppose that a further six months of services would raise even a substantial *possibility* that the child could safely be returned to her parents’ custody.

DISPOSITION

The petitions are denied.

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KING
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.