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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

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

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

B.U.,

Defendant and Appellant.

E055546

(Super.Ct.No. J232564)

OPINION

APPEAL from the Superior Court of San Bernardino County. Gregory S. Tavill,
Judge. Dismissed.

Hassan Gorguinpour, under appointment by the Court of Appeal, for Defendant
and Appellant.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County
Counsel, for Plaintiff and Respondent.

Mother, B.U., seeks reversal of the Welfare and Institutions Code section 366.26¹ order terminating her parental rights to her child, S.U. We dismiss.

I. PROCEDURAL BACKGROUND AND FACTS

Mother was born in 1994. By age 13, she began experimenting with illegal drugs, and around the same time, she had suicidal thoughts. Later, after she found out she was pregnant and “everyone told [her] that [her] life was over,” she cut her wrist with a box cutter. The child, S.U., was born in October 2009. Her alleged father, A.G. (born in 1992) was not married to Mother.

Mother’s family was no stranger to the dependency system, as a search revealed there had been prior dependency cases due to substantiated caretaker absence or incapacity and general neglect allegations regarding Mother as the victim. In January 2010, Mother was again declared a court dependent due to an unhealthy and unsafe home and drug exposure. She was placed with a maternal aunt.

On April 26, 2010, Mother threatened to kill herself and began cutting her wrist. She was taken to Redlands Community Hospital, where she was placed on a 72-hour hold under section 5150. The whereabouts of A.G., the alleged father, were unknown. On April 29, 2010, S.U. was taken into protective custody. The next day, the San Bernardino County Children and Family Services (CFS) filed a section 300 petition (subds. (b) and (g)), which was later amended to add allegations regarding A.G. and strike the allegations

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

under subdivision (g).² Mother was referred for counseling, parenting classes, and an outpatient drug program.

The detention hearing was held on May 3 and 4, 2010. The court found a prima facie case for detention out of home. On May 4, Mother declined the court's offer to appoint a guardian ad litem. S.U. was placed with the maternal great aunt, while Mother had already been placed in a foster home. The court ordered Mother to undergo drug testing.

The jurisdiction/disposition report was filed on May 20, 2010. Mother acknowledged her drug problem, stating her drug of choice was “weed and sometimes . . . coke laced in weed.” On May 7, S.U. was moved to the foster home of A.S. The child was reported to be happy and healthy with no developmental problems. According to the social worker's report, Mother appears to understand her need to “stabilize her mental health issues and suicidal ideations/gestures, engage in parenting classes, counseling, substance abuse treatment, including 12-step program and remain crime free in order to safely reunify with her child.” The proposed case plan included those elements, as well as a psychological evaluation. An addendum report indicated, “The challenge in this case is [for M]other to stop the use of street drugs, remain free of drugs and . . . resolve issues that have lead [*sic*] [her] to self medicate.”

² The alleged father came to court on June 14, 2010, and the court ordered a paternity test. He failed to pick up the testing materials and was last heard from around July 30, 2010.

Effective May 18, 2010, Mother was placed at Diakonia, Inc., Home of Excellence, a group home in Rialto. She began individual counseling and was being treated for symptoms of depression and anxiety. She was taking Celexa, Seroquel and Trazodone for depression and anxiety symptoms. However, by June 11, she went “AWOL” from the group home for two days. She claimed that she went looking for her mom and, without her medication, her mind was racing and she was lost. As of June 14, a guardian ad litem had been officially appointed for Mother. Mother was ordered to undergo a psychological evaluation.

On July 14, 2010, Mother and her guardian waived trial rights. At the contested jurisdiction/disposition hearing on July 30, the court sustained the agreed-upon allegations under section 300, subdivision (b), finding that Mother suffers from substance abuse and mental health issues, both of which impede her ability to parent. Regarding disposition, the guardian stated, “I am pretty well convinced what [Mother] needs is some psychiatric therapy in addition to whatever drug therapy . . . she has been having afforded her. I think she’s got some deep-seated problems that can’t be dealt with just by drugs alone.” The court replied, “I would ask and authorize the worker to make any referrals for any kind of psychiatric therapy, psychological counseling, any other type of counseling services that would be appropriate for her. . . . [¶] And some of those might already be in place. I don’t know. I don’t have that file in front of me.” S.U. was removed from parental care and custody, and Mother was ordered to participate in reunification services. S.U. was to be maintained in her present placement.

Mother participated in a psychological evaluation on July 26, August 2, August 25, and September 15, 2010. According to psychologist Heidi Knipe-Laird, Mother has “learning challenges.” Dr. Knipe-Laird prepared her report on September 21, 2010. The report stated that according to Mother, she was doing well in a special high school; however, she was frustrated because she could not remember what the teacher would say. She believed she suffered from ADHD (attention deficit hyperactive disorder). Mother was “insightful” about her dysfunctional family life. She was “emotionally accessible, and forthcoming in describing her feelings” Her “affect covered a wide range of emotions, from brief smiles and moments of contentment . . . to anger, sadness and frustration” Although she tested in the “low range of average intelligence,” a more accurate assessment was not available because of her struggles with memory. There were no indicators suggesting a thought disorder other than her inability to retain what she had just read or heard.

Based on her evaluation, Dr. Knipe-Laird diagnosed Mother with “Post Traumatic Stress Disorder” (PTSD), with “Anxious and Depressive Features”; “Attention Deficit Hyperactivity Disorder, Methamphetamine Dependence in early full Remission”; possible “Fetal Alcohol Syndrome”; and insomnia, abuse, neglect, and emotional abandonment by her mother. The doctor recommended that Mother be provided with “individual therapy with a licensed, experienced provider. The therapy should aim to reduce . . . PTSD symptoms, provide her with a strong drug recovery component, and assist her in managing her ADHD symptoms. The therapy should also address . . . learning challenges.”

In the November 2010 quarterly summary prepared by a therapist at Home of Excellence, Mother was diagnosed with “Adjustment Disorder, With Mixed Disturbance of Emotions and Conduct, Chronic Bipolar I Disorder, Most Recent Episode Mixed, Moderate With Psychotic Features (Provisional),” as well as “Polysubstance Dependence, In a Controlled Environment[,] . . . Sexual Abuse of Child . . . [and] Parent-Child Relational Problem.” She was being treated with Celexa, Trazodone, and Seroquel, and it appeared that the medications were working. Mother completed a 16-hour parenting class, participated in an outpatient drug program, and successfully drug tested. She was in the 11th grade with a 2.2 grade point average.

At the January 31, 2011, review hearing, the court ordered further reunification services and granted authority to CFS to place the child in Mother’s custody on family maintenance, if and when they could be placed together in the same home.

In the status report prepared for the August 2011 12-month review hearing, the social worker reported that Mother had six overnight weekend visits at S.U.’s foster home; however, she had not been very attentive with the child. When the social worker spoke to Mother on July 15 about the visits, Mother said “she did not help out with bathing, changing, or caring for the child in the home because, ‘I can’t take care of [the child] like they can. I never really wanted kids; they take up your whole life. I need me time and I know I can’t take care of her like [the foster parents] can. Does it make me selfish that I want [the foster parent] to adopt her?’” When Mother called the foster mother, Mother did not ask about her child. Mother wanted S.U. to be adopted by the foster mother, not anyone from Mother’s family.

As of March 14, 2011, Mother was living in Summer Place, a group home. She had not complied with her case plan. On June 14, she went AWOL for 24 hours. On July 9, she “AWOL’d” again for 24 hours. Two days later, she “AWOL’d from the group home” and did not return until late in the evening of July 14. During AWOL, Mother used alcohol, methamphetamine, and marijuana. She returned because she was hungry. On July 15, Mother moved into a level 12 group home. The social worker recommended that services be terminated and that the child be adopted by the current foster parent. Mother was AWOL for the August 1, 12-month review hearing and the matter was continued. Both Mother’s counsel and her guardian ad litem were present.

On August 17, 2011, at the 12-month review hearing, Mother remained AWOL and her whereabouts were unknown. The matter had been set for termination of services. Although Mother’s counsel agreed this was the date to discuss termination, she objected but had “no affirmative evidence [because they] have been unable to find [Mother].” Finding that CFS had made reasonable efforts and provided reasonable services, the court terminated reunification services, set a section 366.26 hearing and ordered the clerk to provide “writ right notice” to Mother. The notice of writ rights was sent to Mother’s former group home in Ontario.³

³ On April 11, 2012, Mother requested that we take judicial notice that “2027 Deodar Street, Ontario, California” is the address of a state-licensed group home known as Summer Place, Inc. We hereby grant the request. (Evid. Code, § 452, subd. (h).)

On September 30, 2011, CFS filed a declaration of due diligence regarding its unsuccessful search for Mother. However, on that same date, Mother was served with notice of the section 366.26 hearing. It appears that Mother voluntarily returned and checked into Canyon Ridge mental institution. Following treatment, she moved into Plan-It Life group home. She was doing well in school. On December 15 she filed a section 388 petition, which was set for an evidentiary hearing along with the section 366.26 recommendations.

In the addendum report prepared for the section 366.26 hearing, the social worker recommended termination of all parental rights and that adoption be selected as the permanent plan. Until January 9, 2012, Mother's visits with S.U. went well; however, on that date, at an unsupervised weekend visit with her own mother, Mother lied in order to leave and obtain drugs. She then tested positive for "amphetamine, marijuana, cocaine, and opiates." This was Mother's second relapse since returning from AWOL status. The social worker opined that Mother was not remorseful. When asked what she should do to stay away from drugs, Mother said, "I don't know, I should not go outside anymore."

The sections 388 and 366.26 combined hearing was held on January 26 and 27, 2012. Mother called three witnesses: her therapist Loraine Gallegos, Plan-It Life child care worker Chiante Leonard, and herself. Her therapist stated that Mother was being treated for "emotional stability, making good choices for herself, decisions." The therapist planned to continue seeing Mother. Ms. Leonard observed Mother's visits with S.U. and described them as going well. Mother testified that she was attending school and would graduate in May 2012. She hoped to attend college and "go into law." While

she had used illegal drugs between October 2011 and January 2012, she had not used since January 9 other than prescription medications. When asked if she could take care of S.U., Mother replied, “Yes. [¶] . . . [¶] Because I’m a mom. Moms just know what to do.” She wanted more time to reunify with S.U.

Arguing on Mother’s behalf, her counsel did not allege any defect in the case plan or the reunification services that had been provided. Rather, Mother’s counsel emphasized how well Mother had done at services and how much she had changed for the better in the past few months. Counsel also complained that the Welfare and Institutions Code was “not geared towards addressing the issues of a minor parent,” who is “put through the process exactly as an adult parent” but sometimes needs more time.

Minor’s counsel urged the court to deny Mother’s section 388 petition and terminate parental rights. CFS counsel acknowledged that Mother had made “some efforts,” but the “ongoing substance abuse problem remains”

Noting the statutory time frames for reunification are not geared to a 15-year-old with a child, the court stated, “I can’t contemplate a 15-year-old that could get themselves in a position to care for and provide for their child within 18 months It is not going to happen. So . . . when you have a kid having a kid, once you remove under our current system, it is almost impossible for them to have the child returned The court further stated: “I think clearly [Mother] made some bad choices, but given [her] age, kids [her] age make bad choices; that is part of being [her] age.” However, “[t]he statute doesn’t contemplate how to do what is right by [M]other who is a teenager . . . [and] a victim of child abuse or neglect”

CFS counsel pointed out, “[A]nother way of looking at it is [M]other . . . actually . . . had two workers. She has her own case still, and that worker has been very supportive and working with her in her own case and continuing to do so.”

Mother’s section 388 petition was denied, and parental rights were terminated.

II. NOTICE ISSUES

Conceding that she “would ordinarily be prohibited from challenging the reunification services finding on direct appeal,” Mother contends she has “good cause” to be relieved of the writ requirement because the trial court failed to provide notice to her correct address. She cites *In re Cathina W.* (1998) 68 Cal.App.4th 716, 722 (*Cathina W.*) and *In re Athena P.* (2002) 103 Cal.App.4th 617, 625 (*Athena P.*).

A. Failure to Comply with Statutory Notice of Writ Rights

The general rule is that a parent may not appeal from an order made at a hearing where a section 366.26 hearing was set unless the parent timely files a petition for extraordinary writ review (§ 366.26, subd. (l)(1)(A)), and the juvenile court must advise the parent of the right to file such a petition. (§ 366.26, subd. (l)(3)(A); Cal. Rules of Court, rule 5. 590(b).) If the court fails to advise a parent of the writ petition requirement in subdivision (l) of section 366.26, the requirement is excused, and the parent can challenge the order setting a section 366.26 hearing on appeal. (*Athena P.*, *supra*, 103 Cal.App.4th at p. 625.)

To ensure that a parent aggrieved by a setting order is made aware it may be attacked only by petition for extraordinary writ, section 366.26, subdivision (l)(3)(A) directs the juvenile court to give notice to the parties of the requirement of filing a

petition for extraordinary writ review in order to preserve any right to appeal issues raised in the setting order. “When the [dependency] court orders a hearing under . . . section 366.26, the court must advise all parties and, if present, the child’s parent, guardian, or adult relative, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under . . . section 366.26, the party is required to seek an extraordinary writ [¶] (1) The advisement must be given orally to those present when the court orders the hearing under . . . section 366.26. [¶] (2) Within one day after the court orders the hearing under . . . section 366.26, the advisement must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under . . . section 366.26. . . .” (California Rules of Court, rule 5.590(b); see also § 366.26, subd. (d)(3)(A).)

B. Analysis

Here, the issue is not whether Mother’s notice was timely; rather, Mother faults the court for allegedly not sending the notice to “the correct address.” According to the record before this court, at S.U.’s detention hearing in May 2010, the court ordered Mother to “file a JV-140 form with current mailing address; any change in address shall require the filing of a new JV-140.” (Capitalization omitted.) Mother lived in various group homes. She began living at Summer Place group home in Ontario on March 14, 2011; however, on July 15, she moved into a “level twelve group home.”⁴ After three

⁴ At oral argument, counsel for Mother correctly noted that CFS’s status review report filed on July 20, 2011, reported that Mother had moved into a level 12 group home, and “address is confidential and on file with CFS.”

days, she ran away for months. Mother admits that she remained AWOL for about three to four months in all. On August 17, 2011, at S.U.'s 12-month review hearing, Mother was AWOL and her whereabouts were unknown. Her guardian ad litem and counsel were present at the hearing. In terminating services and setting a section 366.26 hearing, the trial court ordered the clerk of the court to "provide writ right notice to [Mother]." Thus, on August 18, the clerk sent forms JV-820 and JV-825 to Mother at the Summer Place in Ontario. There is no evidence that this envelope was returned to the court as undeliverable.

On September 17, 2011, a process server tried to serve Mother with notice of the upcoming section 366.26 hearing at the Summer Place in Ontario; however, the person in charge said that Mother "ran away from the group home," did not reside there, and her whereabouts were unknown. That same day, at a different address in Chino, the process server was told that Mother was "no longer a resident" at a group home in Riverside. On September 20, during a followup, the process server was informed that Mother had "not lived at this address 'since last week.'" The process server was referred to Mother's social worker and given the address of that worker's office.

The declaration of due diligence describing efforts by CFS to locate Mother was signed on September 29, 2011. At that point, the search process had ruled out all addresses except one in Rialto, the Diakonia, Inc. Home of Excellence that Mother had left in March 2011, when she moved to Summer Place. At the hearing on September 30, Mother's whereabouts remained unknown; however, it appears that Mother had voluntarily checked herself into a facility for help.

On the afternoon of September 30, 2011, Mother was personally served with notice of the section 366.26 hearing; however, the proof of service does not state the location of service. The notice provides “NOTICE TO . . . [Mother] Plan it Life.” According to Plan-It Life, Mother had arrived at their facility on September 30 and had gone through intake. On October 2, Mother went AWOL from Plan-It Life and was returned by the police that evening. On October 6, Mother suffered an anxiety attack and was taken to emergency. Twenty days later, a notice of hearing was mailed to various parties. While the proof of service notes Mother’s whereabouts as being unknown, it appears she was then living at Plan-It Life. Mother resumed visitation on October 26.

Given the above, CFS argues the court clerk could not be faulted for not knowing Mother’s address “du jour.” Mother was AWOL before, during, and after August 17, 2011, when the clerk was ordered to notify her of her right to seek review via the filing of a writ. Neither Mother’s attorney, her guardian ad litem, nor her family knew where to find her. CFS conducted a diligent search but could not find her, despite the fact that Mother was required to keep the court informed of her correct address. Disregarding her failure to do so, Mother contends she was a 15-year-old child with memory problems, and thus, she should not be held to the standard of an adult. If we accept this argument, then it follows that Mother, as a 15-year-old girl, is incapable of being a parent. Mother may not eat her cake and have it too.

Mother’s reliance on *Cathina W.* and *Athena P.* is misplaced. In *Cathina W.*, the clerk did not mail notice to the mother until four days after entry of the setting order; the notice did not indicate the correct date on which the hearing had been set; and the notice

was returned to the clerk with a label indicating the mother's new address, but no effort was made to mail the notice to the new address. (*Cathina W.*, *supra*, 68 Cal.App.4th at p. 723.) In *Athena P.*, the mother was present in court to hear the referral order; however, the court made no effort to mail her any notice of the writ requirement. (*Athena P.*, *supra*, 103 Cal.App.4th at pp. 623, 625-626.)

Here, the court clerk may not be faulted for not knowing Mother's correct mailing address given the facts before this court. Mother moved from group home to group home. She went AWOL and failed to contact her family, her attorney, or her guardian ad litem. It was Mother's obligation to keep the court informed of her correct address. Thus, in this case, any fault that may be attributed for the failure to receive notice of her writ rights lies solely with Mother. More importantly, we note Mother never complained via her section 388 petition or during the section 366.26 hearing that she did not receive adequate notice of her writ rights. Under these circumstances, there is no reason to excuse the writ petition requirement.⁵ The appeal is dismissed.

⁵ Even if we considered Mother's claim that CFS failed to provide her with reasonable services, we reject it. According to Mother, CFS should be faulted for failing to consider that she "likely had Fetal Alcohol Syndrome" (FAS) and thus failed to provide reasonable services to address the issues associated with FAS. To begin with, the only reference to Mother possibly having FAS is found in Dr. Knipe-Laird's report dated September 21, 2010, which notes that FAS "should not be ruled out." However, Dr. Knipe-Laird diagnosed Mother as suffering from several other symptoms and then recommended "individual therapy with a licensed, experienced provider. The therapy should aim to reduce [Mother's] PTSD symptoms, provide her with a strong drug recovery component, and assist her in managing her ADHD symptoms. The therapy should also address [her] learning challenges." As CFS points out, there is no dispute that Mother's variety of other conditions "accounted for most of [her] major symptoms and made it doubtful that any professional could ever isolate FAS as a distinct diagnosis."

[footnote continued on next page]

III. DISPOSITION

The appeal is dismissed.

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HOLLENHORST

J.

We concur:

RAMIREZ

P.J.

KING

J.

[footnote continued from previous page]

While Mother argues that different services should have been utilized, we note the evidence provided at the sections 388 and 366.26 combined hearing, along with the argument of Mother’s counsel, suggest that Mother was doing fairly well. When she did not go AWOL, she did well in school, winning several awards. She voluntarily returned for assistance and “immersed herself in treatment and got on board with her program” Despite the services offered, Mother honestly admitted she never really wanted kids because “they take up your whole life.” The services provided to Mother under the circumstances of this case were reasonable. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598-599.) Clearly, the issue was never the services provided. Rather, it was the fact that Mother was not ready for the responsibility of being a mom. No diagnosis of FAS, or different services, would have changed that fact.