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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.P., a Person Coming Under the
Juvenile Court Law.

C.P.,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E056495

(Super.Ct.No. J238094)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Gregory S. Tavill,
Judge. Petition denied.

Clara J. Ledford for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Danielle E. Wuchenich, Deputy County Counsel, for Real Party in Interest.

Petitioner C.P. (Mother) filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order terminating reunification services as to her three-year-old daughter, A.P. (the child), and setting a Welfare and Institutions Code¹ section 366.26 hearing.² Mother argues that she was not provided with reasonable reunification services. We reject this contention and deny the petition.

I

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of the San Bernardino County Children and Family Services (CFS) in July and September 2010 and February and March 2011 due to Mother's ongoing mental health issues. In March 2011, Mother had been hospitalized twice under section 5150 for suicidal ideations, and as of March 21, 2011, Mother was hospitalized for a suicide attempt. Mother reported that "she had been cutting [herself] as a cry for help." CFS had attempted to engage Mother in services several times, as recently as March 17, 2011; however, Mother had refused all of the services.

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

² The father is not a party to this appeal.

Prior to her recent hospitalization on March 21, 2011, Mother had called a friend, L.L., and stated that she was overwhelmed, could not care for the child, and asked L.L. to come get the child. When L.L. arrived, she noted that Mother was on the couch wearing the same clothes she had been wearing for a week. Mother confirmed that she had not changed her clothes and had been sitting on the couch for the past four days due to depression. The police subsequently arrived and asked L.L. to take Mother to a crisis center. However, Mother went into the kitchen, came out holding a handful of pills, and threatened to kill herself. The police thereafter transported Mother to a hospital, and the child was taken into protective custody.

At the time of Mother's March 21 hospitalization, Mother and the child were residing with the maternal grandmother and maternal uncle. Their only source of income was the maternal grandmother's social security check of \$840.00 a month. L.L. was willing to become the child's caregiver and reported that she had been a part of the child's life since the child's birth. L.L. had routinely helped with food, supervision, and a place to stay for Mother and the child. The maternal grandmother, who was diagnosed with schizophrenia and presented in a "child like manner," could not care for the child. The father reported that he could not care for the child because he did not have a place to stay and could not even take care of himself. The father also stated that he has seizures, anger issues, a bipolar disorder, and had been suicidal in the past.

On March 23, 2011, a petition was filed on behalf of the child pursuant to section 300, subdivision (b) (failure to protect) and (g) (no provision for support).³ At the detention hearing, the child was formally removed from her parents and placed in the care of L.L. The parents were offered services and visitation.

Mother subsequently reported that she had a physical heart condition and was due to have open heart surgery in April 2011. She further noted that she had been diagnosed with bipolar disorder; that her second suicide attempt was “so she could get to [the hospital]” to get her medication regulated and have a ““break””; and that she was overwhelmed due to her mental issues, a sexual assault in December 2010, and her heart condition. She also reported that she had been using methamphetamine for the last eight months and was seeking a drug treatment program. The social worker referred Mother to a drug treatment program on April 4, 2011, but Mother declined and stated she was going to attend Narcotics Anonymous (NA). Mother further noted that she had been involved with parenting services at “Moses House” since the child was “little,” and insisted on staying with that program. She also stated that she was seeking a psychiatrist.

³ The petition was later amended on April 13, 2011, to include, among others, an allegation regarding Mother’s substance abuse problems.

The social worker recommended that the allegations in the petition be found true and that reunification services be offered to the parents.⁴ The social worker believed that Mother had not benefitted from the services she had sought on her own and that she may need help from CFS. Mother informed the social worker that she would “cooperate with all services.”

By May 27, 2011, Mother was living with her fiancé in a two bedroom apartment, and had begun domestic violence classes, parenting education, and NA. She missed her scheduled open heart surgery because she claimed to not have transportation. She also missed her outpatient services intake appointment because she had moved without notifying the County of San Bernardino Department of Behavioral Health, who went to her previous address to give Mother a ride to the appointment. The fiancé reported that he was on probation for fraud; that he was addicted to methamphetamine for five years, had been clean for four months; and that he collected Social Security due to a traumatic brain injury as a child. The fiancé further noted that Mother needed to keep her problems to herself and that he was not interested in getting to know the child and learning how to parent.

The jurisdictional/dispositional hearing was held on May 27, 2011. The court found the allegations in the amended petition true and declared the child a dependent of the court. Mother was offered liberalized visitation and reunification services and was ordered to participate in the court-approved case plan. Mother’s case plan required her to

⁴ The father however stated that he did not want services or visitation and did not feel he could reunify with the child.

attend a psychotropic medication evaluation/counseling, general counseling, a domestic violence program, a parenting education program, an outpatient substance abuse program, a 12-Step program, and to randomly drug test. CFS also requested to include in the case plan that Mother provide consent to a full and complete release of information regarding her ongoing treatment for mental health issues, including a release for her psychotropic medication and psychiatric treatment. Mother agreed to these additional requirements.

On October 7, 2011, the juvenile court granted L.L. and her husband's request for de facto parent status.

By the six-month review hearing, the social worker recommended continuing Mother's services for an additional six months. Mother had been provided with multiple referrals to services and was participating in her case plan. She was attending domestic violence classes, an outpatient drug treatment program, parenting classes, NA meetings, and randomly drug testing. In addition, Mother continued to receive psychiatric services and was compliant with her psychotropic medication. She however suffered from congestive heart failure and was hospitalized in the intensive care unit from October 24 to October 30, 2011.

Mother also visited the child once a week for two hours, but occasionally had to cancel the visits due to Mother's ailing health. The child continued to reside in L.L.'s home, and was thriving physically and emotionally. The child had known L.L. since birth and was attached to L.L. and her family.

On November 28, 2011, the juvenile court continued Mother's reunification services. At that time, Father requested visitation, having had previously waived that right, and Mother asked for increased, unsupervised visitations. Since the social worker was not present, the court ordered the social worker to submit a packet within 30 days addressing the requests.

At a January 11, 2012, nonappearance review hearing, the juvenile court denied the parents' requests, finding the requests to be inappropriate at the time. The social worker, who had observed the visits between Mother and the child, reported that the child was uncomfortable at the visits and spent most of the time crying for L.L. The social worker also pointed out that although Mother was appropriate in trying to comfort the child, Mother may have had a limited understanding as to why the child was responding in that manner; and that Mother had to miss visits due to her poor health.

By the 12-month review hearing, the social worker recommended terminating Mother's reunification services and setting a section 366.26 hearing. Mother had been referred to multiple services, including domestic violence classes, outpatient drug treatment, random drug testing, parenting classes, NA meetings, arrangements for visitations, and crisis intervention with on-going case management. Mother had been compliant with her case plan by maintaining sobriety, completing a parenting program, a domestic violence class, a drug and alcohol treatment program, and attending NA meetings, as well as participating in counseling to address her depression issues. She was also showing signs of improvement in her parenting skills. However, CFS was unable to verify Mother's mental health status since the provider had not been in contact with the

social worker, and Mother had ceased obtaining medication management for psychotropic therapy with a psychiatrist. As such, CFS was concerned about Mother's mental health and decision-making ability. In addition, Mother was pregnant, and CFS had concerns about Mother's ability to parent two young children simultaneously with a heart condition. Mother had also reported that sometime after her pregnancy she was scheduled to receive open heart surgery, which caused CFS concerns regarding Mother's physical ability to provide proper supervision to a three-year-old toddler.

Furthermore, Mother had been admitted to a hospital on May 4, 2012, for pregnancy complications, and reported that she was to remain in the hospital until the baby's birth in August 2012. In addition, Mother was residing in a two bedroom apartment with her fiancé, who had a criminal record, and her mother, who suffered from mental health issues and epileptic seizures. Mother reported that if the child is returned to her care, the child would reside in the maternal grandmother's bedroom and the maternal grandmother would sleep on the couch until they could afford a larger home. Mother was still unemployed and hoped to secure employment "with the County as the maternal grandmother's caregiver." The maternal grandmother and the fiancé paid the bills and rent.

Moreover, although the social worker recognized that Mother was committed to the child by regularly visiting her and participating in services, the child struggled to be bonded to Mother as a result of being "significantly traumatized by the neglect she had suffered in the past, while living in [M]other's home." The child displayed anxious behavior before and after visitations; the child was aggressive and "clingy" after

visitations; the child cried during the visits and refused to be left alone with Mother. Moreover, the child referred to Mother by her first name and as a sister, and she only recognized L.L. as her mother. Additionally, L.L. reported that the child had to be encouraged to attend visits or speak to Mother on the telephone. Recently, L.L. had the child call Mother on Mother's Day. The child initially refused to speak to Mother; however, with further encouragement, she greeted Mother with a "Happy Mother's Day" and, after saying "I'm done," hung up the telephone. The social worker attempted to interview the child individually about her relationship with Mother, but the child "shut down" and did not "verbalize much, aside from [Mother] being someone that she visits at the CFS office."

At the May 29, 2012, 12-month review hearing, Mother was still hospitalized and unable to attend. Mother's counsel asked the matter to be continued until after the baby's birth, which was scheduled for mid-July. The juvenile court refused to delay the matter that long, but agreed to continue it to June 11, 2012, and have Mother participate by telephone. The court also authorized Mother's counsel to interview Mother or take a deposition of Mother at the hospital with the social worker present.

At the June 11, 2012, hearing, Mother was not present, and her counsel asked for another continuance. Her counsel informed the court that Mother had delivered a premature baby, who weighed two pounds eight ounces, on June 6, and was discharged from the hospital on June 9. Counsel further indicated that Mother was unable to obtain transportation to court. However, counsel informed the court that Mother was able to

obtain a ride to the hospital, from a friend who worked near the hospital, in order to be with the baby.

The juvenile court questioned Mother's decision not to attend the hearing when bus transportation was available to Mother, as well as having at least three days to contact the social worker for assistance with transportation. CFS's counsel noted that the social worker had met with Mother on June 7 and 8, reminding Mother of the hearing, as well as CFS's recommendation to terminate services; and that during that time, Mother had not asked for transportation assistance. Finding no good cause, the court thereafter denied the request for continuance and proceeded with the 12-month review hearing.

CFS filed a report updating the court on Mother's condition following the birth of her baby boy. After giving birth, Mother, who suffered from cardiomyopathy, which is a deterioration of the heart muscles causing weakening of the heart, was transferred to the cardiac unit to monitor her heart. Mother's cardiologist reported that Mother's heart was not functioning on a normal level; and that Mother's "overall quality of life is 'poor' causing normal daily activities to be difficult and challenging for her." Mother stated that if she were unable to take care of the child, her fiancé, brother, or maternal grandmother could provide childcare.

The report also summarized a verbal update from Mother's counselor regarding Mother's progress. The counselor noted that Mother still had not yet met her initial therapy goals and that Mother lacked confidence but understood that she needed to be more assertive. The counselor recommended that Mother obtain a strong support system and continued counseling for her "to rise to the occasion." Mother had attended seven

of the 10 counseling sessions between November 22, 2011, and May 1, 2012, when Mother quit. Mother informed the counselor that she would not be scheduling any more sessions until Mother's health issues were addressed.

Following testimony from the social worker and argument from counsel, the juvenile court found that Mother had failed to participate regularly and make substantive progress in her case plan. The court also found that returning the child to Mother's custody would create a substantial risk of detriment to the child, and that Mother had been offered reasonable services. The court terminated reunification services and set a section 366.26 hearing.

II

DISCUSSION

Mother argues that CFS failed to provide her with adequate reunification services because the services offered failed to address and accommodate Mother's special needs. We disagree.

Initially, we find Mother forfeited this issue because she failed to object to the reasonableness of services below. "Many dependency cases have held that a parent's failure to object or raise certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court. [Citations.] As some of these courts have noted, any other rule would permit a party to trifle with the courts. The party could deliberately stand by in silence and thereby permit the proceedings to reach a conclusion in which the party could acquiesce if favorable and avoid if unfavorable. [Citations.]" (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338-1339, and cases cited therein; see

also *In re Jesse W.* (2001) 93 Cal.App.4th 349, 355.) This policy applies full force to the instant case, as neither the juvenile court nor CFS was put on notice that reunification services were inadequate or that the services offered failed to accommodate Mother's special needs, even though Mother had ample opportunity to object to it or raise the issue. Thus, Mother's attempt to challenge the adequacy of reunification services is an attempt to raise a new issue, which was not presented to the juvenile court. We find the issue forfeited and we need not consider it further. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846 [“[A] party is precluded from urging on appeal any point not raised in the [juvenile] court”].) In any event, we would find that reunification services to Mother were reasonable.

We review the correctness of an order pursuant to section 366.21 to determine if it is supported by substantial evidence. (*In re Shaundra L.* (1995) 33 Cal.App.4th 303, 316.) That standard requires us to determine whether there is reasonable, credible evidence of solid value such that a reasonable trier of fact could make the findings challenged. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) In reviewing the reasonableness of the reunification services, we “recognize that in most cases more services might have been provided, and the services which are provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances.” (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) A court-ordered reunification plan must be tailored to fit the circumstances of each family and designed to

eliminate the conditions that led to the juvenile court's jurisdictional finding. (*In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777 (*Dino E.*))

The record in this case, set out *ante*, reveals the services offered were reasonable: they were tailored to fit the circumstances and to eliminate the conditions that led to the juvenile court's jurisdictional finding, and Mother consented to them. Mother was offered an array of referrals for each of her case plan requirements from the inception of the case. The problem here was not that the services offered were unreasonable but that Mother failed to progress and benefit from the services provided due to her lack of cooperation with CFS, as well as her mental and physical problems. As the record reveals, Mother still had issues with her parenting abilities, mental health, and heart problem. Furthermore, Mother moved into a two bedroom apartment with her mother, who suffered from mental health issues and epileptic seizures, and fiancé, who was on probation and had no interest in parenting the child. In addition, Mother still had no means of supporting herself financially or someone who could care for the child if she underwent heart surgery. Moreover, she had problems maintaining consistent visitation and, when she did attend, the child had no interest in being with Mother. After receiving services for over 12 months, Mother still had not progressed to the point where the child could safely be returned to her care.

Mother argues that the social worker should have offered increased, unsupervised visits and hands-on parenting class. She further claims that the social worker should have requested and obtained reports from Mother's psychiatrist or therapist so that the social worker could have adequate information to make adjustments to Mother's case plan.

However, as noted *ante*, increased, unsupervised visitation was properly denied because the child would cry and preferred not to be left alone with Mother. The child also had anxiety before and after visits with Mother, and she displayed negative behavior after the visits. In addition, the child referred to Mother by her first name, identified Mother as a sister, and had to be encouraged to speak with Mother on the phone. Hence, offering increased visits was not in the best interest of the child. Furthermore, Mother chose the parenting program herself, and CFS could not force Mother to do something she did not want to do. Reunification services are voluntary. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 414-415.) In addition, the record fails to disclose Mother's claim that the social worker was not in contact with Mother's therapist or failed to request a report from Mother's therapist. Ultimately, it was Mother's failure to regularly participate and benefit from the services provided that resulted in the termination of services and the court finding it was detrimental to return the child to Mother's care and not a deficiency in the types of services provided.

We agree with Mother that every reunification plan ““must be appropriate for each family and be based on the unique facts relating to that family.”” (*Dino E., supra*, 6 Cal.App.4th at p. 1777.) We also recognize that parents with mental difficulties may present unique challenges to the dependency process, and that care must be taken to afford the parent particularized assistance where required. (See *In re Misako R.* (1991) 2 Cal.App.4th 538, 545-546; *In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1329-1331.) However, in this case, we do not agree that CFS failed to make reasonable efforts to accommodate Mother's special needs.

Substantial evidence reveals that CFS provided Mother with reasonable services. Further, the services offered were reasonably geared to overcoming the problems that caused the dependency and were appropriate under the circumstances. (See *In re Jasmon O.* (1994) 8 Cal.4th 398, 424-425.)

III

DISPOSITION

The petition is denied.

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RAMIREZ

P. J.

We concur:

McKINSTER

J.

MILLER

J.