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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

M.P.,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E057691

(Super.Ct.No. J241233)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Cheryl C. Kersey,
Judge. Denied.

Harold Gun Lai, Jr., for Petitioner.

Jean-Rene Basle, County Counsel, and Jeffrey L. Bryson, Deputy County
Counsel, for Real Party in Interest.

In this matter, petitioner M.P. (Mother) challenges orders of the juvenile court, which terminated her reunification services and set a hearing under Welfare and Institutions Code¹ section 366.26 to consider the future of the minor. We uphold the rulings and deny the petition.

STATEMENT OF FACTS

The minor was born in October 2011 and was taken into protective custody by the San Bernardino County Children and Family Services (CFS) as she tested positive for methamphetamines at birth.² Mother admitted to the social worker that she had been using methamphetamines for several years, and that she had used them during her pregnancy. Her three older children were all in guardianships with friends or relatives;³ none of their fathers were involved in the children's lives. Mother had two previous criminal convictions for possession of controlled substances; apparently, she was ordered into a "Proposition 36" program but failed to participate. Mother lived what CFS described as a "transient lifestyle, with frequent moves."

At the jurisdictional/dispositional hearing held on December 6, 2011, the minor was found to be a dependent child, and the juvenile court adopted the case plan for services presented by CFS. This required Mother to engage in counseling and parenting

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

² The alleged father was incarcerated at the time of the minor's birth, is not a party to this proceeding, and the juvenile court ordered that he not receive reunification services.

³ This minor was placed with an aunt at the time of the last hearing.

classes and to participate in substance abuse programming and drug testing. The objectives of the plan included maintaining a relationship with the minor through visitation, staying sober, obtaining a residence and source of income, and demonstrating appropriate parenting skills.

In the “six-month” report filed on May 29, 2012, CFS recited that Mother had initially struggled with her participation in substance abuse programs. She had attended one outpatient program for about a month beginning in November 2011, but was terminated due to poor attendance and positive drug tests. She then entered an inpatient program on January 27, 2012, but left after about a month due to a “disagreement” over allegations of drug use, contact with an unapproved individual, and her refusal to sign a “behavioral contract.” Mother did reenter the program on February 23, 2012, and this time was said to be making excellent progress with full participation. The social worker described her as “motivated to maintain her sobriety” and indicated that Mother intended to enter a sober living home when she left the inpatient program. Mother had also visited consistently and engaged in caring for the infant. At the hearing on June 6, 2012, the juvenile court increased visits to two times weekly and authorized CFS to allow even more liberal visitation.

By the time of the 12-month hearing report, Mother was continuing to make progress. The social worker’s report reflected that Mother had initially gone into a sober living facility and was doing well while remaining drug free. However, she had twice been asked to leave the facility due to a curfew violation and having a male “visitor” knock on her window at 3.00 a.m. Her visits had been relatively consistent but the foster

mother reported that Mother often asked for food during the visits and on one occasion, when visits were unsupervised, had an unauthorized male companion. Visits were then returned to “supervised.” Mother had also briefly been employed as a telemarketer, although she had been terminated because she had not met her sales quota; she was actively seeking employment.

Nevertheless, the social worker was optimistic and recommended that an additional six months of services be offered, with the focus on obtaining stable housing and employment.

At the 12-month hearing, the juvenile court began by indicating that it was disinclined to order more services. The matter was then continued so that it could proceed as a contested matter. At that time, the social worker reiterated the belief that Mother could profit by additional services, expressing concern primarily about Mother’s living situation and the need for her to obtain appropriate and stable housing. The social worker conceded that Mother had missed several visits, but also noted that she had completed a parenting class and behaved appropriately during the visits the social worker had attended. Questioned by the juvenile court, the social worker also stressed that although Mother has a “long history” of substance abuse, she had maintained her sobriety for a considerable period of time. The social worker also testified to the improved attitude Mother demonstrated since getting off methamphetamines.

On the other hand, the social worker did express concerns over the presence of an unknown male during a visit or visits, which had caused the visits to be switched back to “supervised.” She also informed the juvenile court that although Mother had returned to

a sober living facility, she could not have the minor with her at that location, but she would be given assistance in finding an apartment or room to rent.

Mother then testified. She told the juvenile court that she had had two job interviews in the past week, and she also denied that she had allowed unauthorized persons to attend visits. She explained that the male companion had merely joined her, uninvited, while she was waiting for the foster caretaker to pick up the baby.

Examined by the juvenile court, Mother admitted that her last previous paying job was in 2007. She also confirmed that her older children had been placed by her with relatives in voluntary guardianships because “I didn’t want them to be out in the streets with me.”

In denying additional services, the juvenile court commented, “I just don’t see it I don’t understand.” It further noted Mother’s poor employment history and the fact that she had not progressed beyond a controlled “sober living” environment, which was not suitable for the minor. The juvenile court also clearly expressed its doubt that in four months (the time remaining in the 18-month period; see § 366.22, subd. (a)) Mother would be able to find steady employment and a residence. When the juvenile court indicated that it would terminate services, Mother vowed to try “extra harder . . . regardless of the decision I’m still going to push forward and do what I have to do” At this point, the caretaker stepped forward and presented the (unsworn) view that Mother was not really acting as a mother in that she showed no interest in accompanying the caretaker to doctor visits and constantly asked for food and clothing for the minor.

After formally announcing its decision, the juvenile court reminded Mother and her attorney that she could file a petition for modification under section 388 at any time up to the section 366.26 hearing, and indicated its complete readiness to alter its decision if Mother proved the juvenile court wrong.

DISCUSSION

By the time of the 12-month hearing, for a child who was under the age of three years when removed from parental custody, the court’s powers to order additional services—and the concomitant additional delay—are strictly limited by statute.⁴ (See §§ 361.5, subd. (a)(1)(A), 366.21, subd. (g)(1).) The court can only order additional services if it finds a substantial probability that the child *will* (not *may*) be returned to the parent within the extended period. In this respect, the court’s discretion at the 12-month hearing is much more limited than at the six-month hearing. (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 179, fn. 6, 181.) By the time a parent has received a full year’s worth of services, the allowing of additional services is “disfavored.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845.) Because finding a permanent home is particularly critical when a young child is involved, the Legislature has set the bar high when a parent asks for services beyond the 12-month period.

The juvenile court’s decision whether to order additional services is reviewed for abuse of discretion (see *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1460) but the

⁴ We do not consider the exception where reasonable services have not been provided, which is not argued in this case.

finding that there is no substantial probability of return is reviewed for substantial evidence, and we review the record in the light most favorable to the juvenile court's decision. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689; see also *In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038 ["The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it"].)

Before it can make a finding that there is a substantial probability that the child will be returned within the extended period, the court must make specific findings, including that the parent has demonstrated "the capacity and ability both to complete the objectives of . . . her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." (§ 366.21, subd. (g)(1)(C).)⁵ We find that substantial evidence supports the juvenile court's finding that Mother did not qualify under this requirement.

We agree with Mother (and in fact with CFS, which originally proposed additional services) that she did make good progress. She is to be commended for having achieved sobriety; however, she did have some false starts and also demonstrated some difficulty complying with the rules both in the inpatient program and her current sober living facility. As Mother had not yet demonstrated an ability to maintain her sobriety without

⁵ Mother argues, and CFS agrees, that the juvenile court erred when it found that Mother failed to participate in her service plan and failed to make substantial progress. We accept CFS's concession, which we believe is well founded.

the structure and support she was currently enjoying, the juvenile court's skepticism over her ability to permanently defeat her long-standing addiction was fully justifiable.

The same may be said of the reunification plan's requirements that she obtain an independent residence, or at least a residence in which the minor could live with her, and identify a source of income. Again, we commend Mother for finding work on one occasion and actively seeking employment; however, she had not yet demonstrated an ability either to maintain employment or identify some other source of income. Most importantly, she had not shown that she could establish a suitable home for the minor. Given her long history of living a "transient lifestyle," once again the juvenile court could properly be skeptical that she would be able to find and establish such a home within four months.⁶

If the decision to terminate reunification services and pursue a permanent plan for the minor had been made at the six-month hearing, Mother's position would be stronger; it could be argued that the record shows a substantial probability that the minor *may* be returned to her within the next time frame. But, as we have explained, that is not the standard, and the juvenile court did not err in finding that there was not a substantial probability that the minor *would be* safely returned to Mother's care before the outer period for services expired.

⁶ Because the record is murky on the issue, we do not even discuss the current status of Mother's other children or whether she has any relationship with them.

DISPOSITION

The petition for extraordinary writ is denied.

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HOLLENHORST
Acting P.J.

We concur:

McKINSTER
J.

CODRINGTON
J.