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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

C.A.,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Real Party in Interest.

E058284

(Super.Ct.No. RIJ114186)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Jacqueline C.

Jackson, Judge. Petition denied.

David A. Goldstein for Petitioner.

No appearance for Respondent.

Pamela J. Walls, County Counsel, and Julie Koons Jarvi, Deputy County Counsel,
for Real Party in Interest.

The mother of C.C. challenges the decision of the juvenile court to terminate reunification services and set a selection and implementation hearing under Welfare and Institutions Code section 366.26.¹ She contends that there was not sufficient evidence to support the juvenile court's finding that returning her daughter to her custody would create a substantial risk of harm to the child. We disagree and so we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2011, C.C. was born prematurely at 36 weeks gestation. The minor was in the neonatal intensive care unit due to growth restrictions and lack of oxygen. Mother had received no prenatal care, smoked throughout her pregnancy, and admitted to past methamphetamine use. She had a negative toxicology screen, but the baby had not been tested at birth. The hospital social worker contacted Child Protective Services (the department), because she was concerned with the home environment and wanted an assessment made before discharging the baby.

When contacted by the social worker, mother explained she did not receive prenatal care because she had not been approved for Medi-Cal and could not afford to pay cash as the clinics demanded. Whenever she required medical attention, she went to an emergency room. She did not learn of her pregnancy until she went to Kaiser Hospital because of her high blood pressure. She was four months pregnant at the time. She stopped buying cigarettes, but admitted she smoked occasionally throughout the pregnancy.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

Mother disclosed to the social worker that in 2007 she had two children who were made dependents. She failed to complete her case plan, and the children are currently placed with their maternal grandparents in Washington.

An investigation was made of the parents' apartment, and it was found that they had made adequate provisions for baby, including a bassinet, car seat, high chair, diapers, and formula. Mother obtained Medi-Cal insurance and began receiving WIC program (the special supplemental nutrition program for women, infants, and children) benefits. It was determined that the baby would not be detained, but mother was warned about the dangers of smoking cigarettes around her.

Prior to the infant's release from the hospital on February 17, 2011, the social worker experienced some difficulties in contacting the parents. On February 22, mother telephoned the social worker. Mother stated that she had received the social worker's message, but had no way of calling her. She denied the claims of the hospital social worker that she had ever offered to allow her (mother) to use the office phone.

Mother reported that she had taken the child for her first doctor's appointment earlier that day. The child was in good condition and had gained six ounces since her release from the hospital. She stated that the child was eating well and had experienced no difficulty breathing when feeding. When asked what she would do if the child did stop breathing, mother stated she would call 911 as her phone could be used for emergency purposes.

On March 2, 2011, the social worker and a public health nurse (PHN) visited mother and the child at home. The child was dressed in clean, seasonally appropriate

clothes, appeared well nourished, and was free of any marks or bruises. The PHN concluded there were no developmental concerns, no obvious health or dental issues, and no evidence of neglect.

Mother failed to appear for an on-demand drug test on March 3, and a decision was made by CPS to file an out-of-custody petition in order to monitor the family more closely.

On March 9, the juvenile court found that a prima facie showing had been made that the child came within section 300, subdivision (b). The child remained in the parents' custody. The court ordered that the parents submit to random drug testing, and that the child be detained if the parents did not comply or tested positive.

Both parents tested positive for amphetamines, and the social worker physically removed the child on March 21. The social worker observed that the family's apartment was cluttered, but otherwise clean and appropriate. The child was nicely dressed and appeared to be clean and well cared for. She had no marks or bruises to indicate any abuse or neglect. The parents placed the child in her car seat and provided the social worker with a diaper bag full of provisions for her.

At the May 17 jurisdictional hearing, the juvenile court found the allegations of the petition to be true, and physical custody of the child was removed from the parents. Mother was provided reunification services. The court gave authorization to the department to allow unmonitored visits, and, when appropriate, to place the child with mother at her residential drug program.

Mother began residing at the My Family Incorporated (MFI) inpatient substance abuse program in August 2011, and the child was placed with her on family maintenance on September 29.

On November 21, 2011, the juvenile court ordered family maintenance services to continue for mother.

Mother successfully completed the inpatient drug program on November 13, 2011. She also completed programs in anger management, domestic violence, parenting, and self esteem. She enrolled in an outpatient program with Riverside Substance Abuse Program, and was residing with her child at a sober living home.

Mother complied with drug abuse testing and tested negative on January 25, April 3, April 5, and April 15, 2012. She tested positive for amphetamine on April 16, 2012. She asserted she was not using and provided the social worker with paperwork from her doctor stating that he had prescribed her Sertraline, a drug that can affect test results. Two days later on April 18, mother submitted to oral drug testing and the results were negative.

Mother had been compliant and open to receiving services. The social worker also reported that she maintained contact with her and made sufficient progress in completing her case plan. The department noted mother's long history with drug use, and despite her successful completion of the inpatient program, expressed concern that it took some time for her to enroll in an outpatient program. It recommended, therefore, that family maintenance be continued because it believed that additional time was needed to monitor the child's placement and mother's progress in light of her recent positive test.

On June 19, 2012, the juvenile court continued family maintenance services, setting the next status review hearing for December 19.

On August 6, 2012, mother informed the social worker that she was leaving her sober living home because it was relocating to Fontana, and she did not like that city. Mother added that she was no longer friends with her roommate who had been allowing her to use her cell phone, but she provided the social worker with another cell phone number where she said she could be reached. That was the last contact the social worker had with mother until the latter appeared in court on December 19, although the social worker had made numerous attempts to contact her. In September, the juvenile court issued a protective custody warrant.

The juvenile court continued the hearing to January 23, 2013, so that the department could update it about mother's current circumstances. It ordered that mother submit to a hair follicle test.

After the conclusion of the hearing, mother informed the social worker about her circumstances during her five-month disappearance. When she left the sober living home, she resided with a friend in Ontario who told her that she did not want the department coming around lest they be kicked out, because the landlord was not aware that other people were living at the apartment. "Things just snowballed from there and after time passed she was afraid to call [the social worker]." Although mother had stopped attending MFI in June 2012, she stated she had been going to AA and presented the social worker with attendance cards from July until December.

Mother stated that she was currently staying with her sponsor, who was helping her financially, since she had no income. She explained that she believed that welfare benefits had stopped, and that if she contacted her welfare worker, the department would detain the baby. The social worker indicated that she would contact the welfare worker so that mother could have her benefits reinstated. The social worker transported mother to complete an on-demand drug test. Thereafter, she took mother to her sponsor's home. There was a mattress in the living room with mother's belongings on it. Mother said she and the child slept on the couch. The child appeared to be in good health and spirits, and appeared free from abuse and neglect. She was dressed appropriately for the cold weather. She appeared to be very well bonded with her mother, and was meeting her developmental milestones. Mother indicated that she would enroll in the MOM's drug program.

The results of the on-demand test of December 19, 2012, were received on January 16, 2013, and were positive for methamphetamine. As a consequence, at the continued section 364 hearing on January 23, the juvenile court granted the department's oral motion to detain the child. The department then filed a section 387 petition to remove the child from mother's custody based on the allegation that the previous disposition had not been effective in protecting the minor because of mother's failure to maintain sobriety.

On January 25, 2013, mother had a positive hair follicle test for methamphetamine and amphetamine.

Subsequently, mother explained to the social worker that things started going downhill when her housing became unstable. In January, she left her sponsor's home and moved in with the paternal grandmother. Mother denied any drug use and stated she did not know the reason for the positive drug test, although she suggested that the cause might have been the various prescription medications she was taking.

On January 23, mother enrolled in the inpatient drug program at MFI and, in addition, enrolled for random drug testing, parenting, and individual and group therapy.

On March 12, the juvenile court conducted a contested section 364 family maintenance review hearing, as well as a contested jurisdictional dispositional hearing pursuant to section 387. Mother's counsel offered no affirmative evidence regarding jurisdiction and indicated that the court had everything before it to take jurisdiction. Rather, he argued that the court should continue the matter because mother had tested clean six or seven times through MFI since the positive hair follicle test in January, and she was about to graduate from that program the next day.

The juvenile court terminated further reunification services to mother, and set a selection and implementation hearing. It commented that "the light may have come on for mom," but the court was concerned about the "light staying on." It added that its job was protecting the child and the "cyclical process that mom goes through, that means the baby has to walk through as well."

DISCUSSION

In dependency cases, we do not require parents to be perfect. As stated in *Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, "[t]he question we face is not whether

Mother has an unblemished drug testing record or whether Mother is a perfect parent. Rather, the question is whether substantial evidence supports the juvenile court's finding that returning the children to Mother's custody would create a substantial risk of physical or emotional detriment to the children." (*Id.* at p. 1327-1328; also see *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 504 (*Rita L.*))

Mother contends that she has participated in and benefitted from services. She had a plan in place once she graduated from her residential treatment program, which was the day after the contested hearing. Although she had a relapse, she got herself back on track and went through another residential treatment program. She concludes, therefore, that substantial evidence does not support the juvenile court's finding that a return to her custody would create a substantial risk of physical or emotional detriment to the child. Unlike the situation in *Rita L.*, mother's relapse was not simply a one-time positive drug test of questionable accuracy. Rather, she disappeared for five months during which time her housing became unstable, she lost welfare benefits, and she resorted to drug use. What is significant is that this episode does not appear to be an isolated one. Mother has shown that she can maintain sobriety for only short periods of time before succumbing to temptations. She has a pattern of cyclical behavior, as the juvenile court noted. During this disappearance, mother had to rely on the charity of others to provide a home and food for herself and her child. Mother has certainly demonstrated that she can properly care for her child when she is sober and has the resources to do so. However, she has also shown that when using drugs, she has neither the judgment nor skills necessary to obtain those resources—food, shelter, and medical care—for herself or her child, without

supervision. There is a potential for serious harm in this situation, and the fact that the minor has not suffered actual harm heretofore does not detract from the substantial nature of the risk. (Cf. *In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136.)

Thus, we must conclude that the juvenile court's order is supported by substantial evidence. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

The petition is denied.

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KING
J.

We concur:

RICHLI
Acting P. J.

MILLER
J.