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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re I.F., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.D.,

Defendant and Appellant.

E061882

(Super.Ct.No. J253040)

OPINION

APPEAL from the Superior Court of San Bernardino County. Cheryl C. Kersey,
Judge. Affirmed.

Megan Turkat Schirn, under appointment by the Court of Appeal, for Defendant
and Appellant.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,
for Plaintiff and Respondent.

Appellant K.D. (mother) appeals the juvenile court's termination of reunification services with regard to her son, I.F. (the child) at the Welfare and Institutions Code¹ section 366.21, subdivision (e) hearing. We affirm.

PROCEDURAL BACKGROUND

On January 31, 2014, the San Bernardino County Children and Family Services (CFS) filed section 300 petitions on behalf of the child and his brother, J.B.² (the children).³ J.B. was six years old at the time, and the child was seven years old. The petitions alleged that the children came within section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The petition included the allegations that mother exposed the children to dangerous individuals, which placed them at risk of harm and neglect; that mother lacked basic provisions for the children; that mother had an unstable lifestyle and a history of substance abuse; and that she neglected the children's educational needs.

The social worker filed a detention report stating that she received a referral from Redlands Community Hospital alleging severe neglect of the children by mother. J.B.

¹ All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

² J.B. is not a subject of this appeal.

³ Mother previously filed a Notice of Intent to File Writ Petition (case No. E061881). The petition was subsequently dismissed Pursuant to Evidence Code section 452, subdivision (d), we take judicial notice of the record in case No. E061881.

was brought to the emergency room due to having a “foreign body in his ear.” Mother told the hospital staff they were homeless. The children were disheveled and very thin, and they “reeked heavily of an unclean odor.” All of their clothes were dirty and torn. When the social worker arrived at the hospital, mother reported that she and the children had been staying at a residence for the past two weeks, but she did not have transportation to return there. The police went to the residence to check on the provisions for the children. The residence was described as a “flop house,” where known drug users went for shelter on a regular basis. Mother denied current drug use, but said she was taking many prescription drugs for medical issues such as depression and fibromyalgia. She said that she had not had contact with the child’s father since he was an infant, and she had not had contact with J.B.’s father in three or four years.⁴

The detention hearing was held on February 3, 2014. The court detained the children in foster care.

Jurisdiction/disposition

The social worker filed a jurisdiction/disposition report dated February 24, 2014, recommending that mother be provided with reunification services. The social worker reported that mother had four older children who were not in her custody: S.F. (age 9) and J.F. (age 10) were in a legal guardianship with the maternal grandmother, and mother’s oldest son, R. (age 19) was also in a legal guardianship with the maternal

⁴ The child’s alleged father is not a party to this appeal. Thus, facts relating to him will not be included in this opinion.

grandmother when he was a minor. Mother's daughter, I.B. (age 15), was under the sole legal and physical custody of her father.

The social worker attempted to interview the children; however, the child and J.B. were very limited in their speech. They both appeared to have missed several months of school, and their educational development appeared to be delayed. The child displayed behavioral problems with poor impulse control, lack of patience, and possible Attention Deficit Hyperactivity Disorder (ADHD). He was referred for further assessment of his behavioral and emotional needs.

On February 21, 2014, the social worker filed amended section 300 petitions, which added an allegation under section 300, subdivision (j) (abuse of sibling). The amended petitions alleged that the child's siblings, J.F. and S.F., were removed from mother in 2004 as a result of general neglect, and that mother failed to reunify with them.

At the jurisdiction/disposition hearing on February 24, 2014, the court found that the children came within section 300, subdivisions (b), (g), and (j), declared them dependents of the court, and placed them in the custody of CFS. The court ordered mother to participate in reunification services and visitation. The court also advised mother that failure to visit or contact the children may result in the termination of services at the six-month status review.

Six-month Status Review

The social worker filed a six-month review report dated August 25, 2014, recommending that the court terminate services and set a section 366.26 hearing. The

social worker recommended a Planned Permanent Living Arrangement (PPLA) for the child and adoption for J.B. The social worker reported that, on July 10, 2014, the child was moved from his placement with his brother because he needed a higher level of care. When the children lived together, the child manipulated J.B. into doing things that would get him into trouble. The child was sexually inappropriate with J.B. The child also attempted to choke J.B., threatened to kill another foster child, and reported that he had “people in his head . . . telling him to do bad, violent things.” The child even tried to strangle himself, saying that he wanted to kill himself because he was “tired of being confused and [he missed his] mom.” A crisis team was called to evaluate him. He did not meet the criteria for hospitalization. The social worker reported that the child was currently placed in Child Help Village and was making progress. The social worker opined that the child was unadoptable.

The social worker reported that mother was required to complete an outpatient substance abuse program, random testing, a 12-step program, a parenting class, and general counseling. She was given referrals, but did not show up for any appointments set up by her service providers. The social worker had some contact with mother by email and phone each month, but mother had only made one visit to the CFS office for a meeting on May 28, 2014. As to visitation, mother made several comments in her emails that she wanted to see her children. However, she never returned any calls or emails regarding visitation. Mother did not have any visits with the children during the reporting period.

A contested six-month review hearing was held on September 9, 2014. Mother testified at the hearing that she had not completed any of the components of her case plan. She further claimed that she was unaware of any of the components, except for the parenting class. Mother said that all of her papers, including her case plan, were stolen from her. Mother also admitted that, during the months of February 2014 to August 2014, she did not visit the children. She said she repeatedly asked to see the children, but she could not get the social worker to set up the time and place for a visit. Mother said she did have one visit with the child on September 1, 2014, and he called her “Mom” and said he missed her. Mother testified that, during a “good portion” of the last six months, she was homeless. However, she was currently staying with a friend. When asked how she could assure the court that if it continued her services for the next six months, she would participate and have visits, mother replied, “All I can do is give my word, and I would do anything right now. I want my kids home.”

The social worker also testified at the hearing. She said that mother never asked to have a set time when she could meet the children. When asked why she was recommending termination of services, the social worker stated that there had been no indication of any motivation on mother’s part to participate in her services. Furthermore, mother had not visited the children. The social worker said mother could have had visits at any time; nonetheless, mother blamed the social worker that she had no visits. Thus, the social worker opined that if mother was given another six months of services, “we’re going to have the same result.” The social worker also confirmed that the child had

behavioral problems, including ADHD, hearing voices, being suicidal, and threatening to kill other foster children in the home. She opined that mother did not have the parenting skills to handle those issues. She added that “[e]ven [the] licensed foster homes couldn’t handle him.” The social worker confirmed that the child was at Child Help Village, which had intensive mental health services. The long-term plan for the child was just to get the help he needed; however, the future was unknown for him. The social worker stated that the child did say he missed his mother one time, but he had not expressed that he wanted “to go home.”

After considering all the evidence, the court commented that both children had exhibited behavior problems that resulted from abuse from their mother. The court noted that, at a six-month review hearing, it was required to decide if there was a substantial probability that the children could be returned to mother. In this case, the court said there was no chance. The court stated that nothing in the record indicated that mother had engaged in any services offered. The court found that the return of the children to her custody would create a substantial risk of detriment to their safety and well-being. The court further found that reasonable services had been provided and that mother had failed to participate regularly and make substantive progress in her case plan. The court terminated services and set a section 366.26 hearing as to J.B. As to the child, the court found that there was a compelling reason not to set a section 366.26 hearing. It found clear and convincing evidence that the child was not adoptable and that there was no adult available to become a legal guardian. Thus, termination of parental rights was not

in his best interest. The court terminated mother's reunification services, continued the child as a dependent, and maintained him at Child Help Village, pending his mental health and educational progress. The court ordered the permanent plan of "placement with Child Help with identification of a caring adult to serve as a connection." The court ordered visitation for mother and the child to be once a week for two hours.

ANALYSIS

The Juvenile Court Properly Terminated Reunification Services At the Six-month

Hearing

Mother argues that the court erred in not granting her an additional six months of services. She specifically claims that the court should have allowed additional services since the child wanted her to receive services and there was not an identified permanent plan or home for him. She further argues that the court focused entirely on her lack of progress in her case plan, but ignored that it was in the child's best interest for her to continue services, since he was not adoptable. We conclude that the court properly terminated services.

A. The Court Properly Terminated Reunification Services

If a child who, on the initial date of removal from a parent's custody, was three years or older, a court can order reunification services for up to 12 months. (§ 361.5, subd. (a).)

Section 366.21, subdivision (e), provides: "At the review hearing held six months after the initial dispositional hearing, . . . the court shall order the return of the child to the

physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . . . The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. [¶] . . . [¶] If the child is not returned to his or her parent or legal guardian, the court shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated.”

The court in *In re Derrick S.* (2007) 156 Cal.App.4th 436 held that “section 361.5, subdivision (a)(1) does not establish an iron rule that the parent of a dependent child who is over the age of three is entitled to, and must always receive, 12 months of reunification services. Accordingly, a juvenile court conducting a dependency for a child above the age of three retains the discretion to terminate the provision of reunification services before expiration of the 12-month period.” (*Id.* at p. 449.)

In *In re Aryanna C.* (2005) 132 Cal.App.4th 1234 (*Aryanna C.*), a juvenile court terminated the father’s reunification services prior to the expiration of the six-month time period contained in sections 361.5 and 366.21. (*Id.* at p. 1239.) The father had missed scheduled assessments, tested positive for controlled substances twice, and missed

virtually all of his scheduled visits with his children. (*Id.* at p. 1241.) The appellate court affirmed the court’s order, noting the father’s “abysmal record of failure at reunification thus far.” (*Id.* at p. 1241.) The court stated that the juvenile court “had little choice but to find [the father] had not complied with his reunification plan and was unlikely to do so in the near future.” (*Id.* at pp. 1241-1242.) The court further concluded that “the juvenile court has the discretion to terminate the reunification services of a parent at any time after it has ordered them, depending on the circumstances presented.” (*Id.* at p. 1242.) The court asserted that “[its] conclusion [was] consistent with the purposes underlying the dependency system. Where, as the record shows in this case, the likelihood of reunification is extremely low [citation], a continuation of the reunification period would waste scarce resources and delay permanency for dependent minors.” (*Ibid.*)

Here, the court terminated mother’s services after finding that there was no substantial probability the child could be returned to her. The evidence was clear. In the prior six months, mother was homeless for most of the period, and she failed to participate in any reunification services that were provided to her. She also failed to participate in any visitation with the child. At the six-month review hearing, mother admitted she had not completed any part of her case plan. She also admitted that she did not have any visits during the six-month reporting period. She did have one recent visit; however, it occurred after the social worker recommended termination of her services. Therefore, like the father in *Aryanna C.*, *supra*, 132 Cal.App.4th 1234, mother’s efforts were abysmal, and the likelihood of reunification was extremely low. (*Id.* at p. 1242.) In

fact, the juvenile court found that there was no chance the child could be returned to her. Mother's visitation record was virtually non-existent. As the court in *In re Monique S.* (1993) 21 Cal.App.4th 677, 682-683 stated, "[t]here is no purpose served in continuing to offer services where a parent, absent extenuating circumstances, makes no effort to reach out to his or her child for six months in the dependency process." In such case, the continuation of reunification services would be a complete waste of resources. (See *Aryanna C., supra*, 132 Cal.App.4th at p. 1242.)

Mother contends that, even though she was not compliant with her case plan, it was still in the child's best interest to continue services, since he requested for her to have additional services, and there was no delay in permanency for him since he was placed in the Child Help facility. Mother merely cites the child's counsel's closing argument at the hearing, when she asserted that minor expressed that he wanted visits with mother. There is no actual evidence that minor requested mother to have more services. He only expressed that he missed her. We note that, at the six-month hearing, the court ordered visitation for mother, even though she had previously failed to visit the child. In any event, the purpose of reunification services is to facilitate reunification of the family. (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.) As the court found, there was no substantial probability that the child would be returned to mother within the statutory timeframe. Thus, there was no reason to continue her services.

DISPOSITION

The order is affirmed.

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HOLLENHORST
J.

We concur:

RAMIREZ
P. J.

CODRINGTON
J.