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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

B.B.,

Petitioner,

v.

THE SUPERIOR COURT OF
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E062340

(Super.Ct.No. J250657)

OPINION

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

Judge. Petition denied.

Gloria Kim-Chung for Petitioner.

No appearance for Respondent.

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

Petitioner B.B. (mother) has filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's order terminating reunification services and setting Welfare and Institutions Code¹ section 366.26 hearing. Mother contends the court erred in finding that reasonable services were offered to mother and there was not a substantial probability that S.M. (minor) would be returned within 18 months.

For the reasons set forth below, we deny mother's writ petition.

FACTUAL AND PROCEDURAL HISTORY

Maternal grandmother was in the process of adopting five of mother's six children, when the social worker asked maternal grandmother if she would adopt mother's seventh child.² Children and Family Services (CFS) had received a referral that mother had given birth to minor in August 2013.³ Both mother and minor had tested positive for amphetamines. Mother had six older children removed from her care due to drug use and domestic violence. She had not participated in drug testing and substance abuse treatment. She only attended a few domestic violence classes. Five of the children

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

² In March 2012, mother gave birth to her sixth child, D., who was born positive for methamphetamine, THC and benzodiazepines. The juvenile court removed him from mother's care. At the time of the report, D. had severe physical problems and was placed in a medically-fragile placement. Mother did not know the identity of D.'s father because she was molested while homeless.

³ Minor is the only child who is the subject of this appeal.

were removed in 2010. Her services to them were terminated in 2011, and parental rights were terminated on May 14, 2013.

Three months later, on August 9, 2013, CFS filed a section 300 petition on behalf of minor alleging failure to protect under section 300, subdivision (b), and abuse of sibling under section 300, subdivision (j).

At the jurisdictional/dispositional hearing on October 4, 2013, the court found that minor came within section 300, subdivisions (b) and (j). Although CFS could make a case for denying reunification services, CFS decided to offer services to mother since she had negative tests and was participating in treatment. The court ordered mother to participate in reunification services. The court ordered weekly visitation for two hours minimum. The court warned mother that services would be offered for only six months, given minor's age, unless the court found a substantial probability that minor could be returned to mother within the time period not to exceed 18 months.

On April 3, 2014, at the six-month status review hearing, it was recommended that mother continue to receive family reunification services. Mother was in partial compliance of her case plan, but had not yet completed any components.

Mother attended only a few outpatient substance abuse services before moving to Riverside in October 2013. Mother tried to enroll in an inpatient program in Riverside; she was wait-listed and never admitted. Several months later, mother moved back to Victorville and enrolled in services including a perinatal program. Her success was moderate. Initially, mother's visits were irregular. She would miss visits. When she did

attend, she left early. However, mother improved her performance and visited regularly and appropriately.

At the six-month review hearing, the court ordered mother to drug test that day. Although mother had not made the amount of progress the court had expected by then and had not established a stable home as the court had hoped, the court reluctantly agreed with CFS's recommendation to continue services. The court found that CFS provided reasonable services to mother but her progress was moderate. Mother's counsel did not object. The court ordered the reunification plan to remain the same.

The 12-month status review report filed September 25, 2014, recommended that mother continue to receive services even though mother was only in partial compliance with her plan and had not completed any components. Mother was scheduled to complete her six-month perinatal program in August 2014. Mother, however, was hospitalized for pregnancy complications from April until the end of May 2014, when her eighth child was born. Therefore, she did not complete the perinatal program. Since mother was living with the father of her eighth baby and his paternal grandmother, CFS allowed the new child to remain in the home. Mother did have a positive alcohol test on August 19, 2014.

Minor was diagnosed with pulmonary valve stenosis, atrial septal defect, encephalopathy, and autistic disorder. At her specialist visit with neurologist Dr. Darshan Patel on September 19, 2014, minor's report noted her diagnoses as "encephalopathy, not elsewhere classified, unspecified delay in development, difficulty swallowing, epilepsy and recurrent seizures."

At the 12-month hearing on October 3, 2014, the court stated that it could be persuaded that additional services for mother were not warranted, and asked for argument. Mother's counsel argued that mother's intentions were good. Minor's counsel asked that the matter be set as contested. County counsel disagreed with the recommendation of continuing services since the foster care worker supervising mother's visits recommended that visits be suspended. During the visits, minor cried and screamed the entire time. The worker sent letters to the CFS social worker but received no response. The CFS social worker had only seen minor twice during the case, and there was no monthly contact between minor and CFS. The CFS social worker had not seen minor for seven and one-half months. Minor's counsel also suggested that services may have been inadequate since the CFS social worker had not been responsive. Minor was developmentally delayed with medical issues and mother had been asked to cooperate with Inland Regional Center (IRC) services by signing the paperwork to allow IRC's involvement. Minor also needed services from Special Education Local Plan Area (SELPA).

Mother's counsel disputed and objected to minor's counsel's statement. According to mother, minor did not scream and cry during visits and objected to suspending visits. Mother's counsel never raised the issue of unreasonable services.

The court allowed the social worker from Moses House, who had a positive evaluation for mother, to observe visits through the window to compare observations. The court continued the matter for a contested hearing.

An October 23, 2014, CFS first addendum report recommended that services be terminated and a section 366.26 adoption hearing be set. Since the last hearing, the court allowed one visit between mother and minor; the visit was supervised through an observation window by CFS supervisor Pierre Duong, the CFS social worker, the parenting facilitator from Moses House, and a children's advocacy group social worker. Although a two-hour visit was scheduled, it was terminated after one hour. The beginning of the visit went well. Forty minutes into the visit, however, minor began to cry and mother could not comfort minor. As minor began to cry, mother gave her toys, which eventually over-stimulated minor. Minor only stopped crying when mother held her. Because of minor's health concerns, they ended the visit. Minor then stopped crying and quickly calmed down when the foster mother held her. There was a strong bond between minor and her foster parents. Minor was happy when she left with her foster parents.

Duong opined that mother would have a difficult time caring for minor, who was only 14 months old, and minor's five-month-old half brother, and recommended that mother's services be terminated. Mother's certificates of completion were attached to the report. They were all dated October 9, 2014.

At the continued hearing, the court ordered supervised, weekly visitation for 30 minutes. Because of minor's medical conditions, the court ordered the social worker to stop the visit as soon as minor began to cry, even if the visit had only progressed one minute. The court continued the hearing to determine if mother's services should be terminated and a section 366.26 hearing set.

CFS filed a second addendum report dated November 6, 2014, recommending that services be terminated and a section 366.26 permanency planning hearing be set.

Although mother claimed that her visits had been consistent since July 2014, the contact record document revealed that: (1) mother cancelled her visit on July 31, 2014; (2) at the August 4, 2014 visit, mother was 20 minutes late and the visit ended 14 minutes early because minor screamed; (3) mother missed visits on September 5, 2014, October 3, 2014, and October 10, 2014; and (4) on October 16, 2014 mother was seven minutes late.

On September 13, 2014, the foster care worker reported that, during the last couple of months, minor would cry during visits with mother, sometimes the full two hours. Mother claimed that minor cried because she was tired or needed a bottle of water or milk. Mother offered to breast feed minor; the request was denied.

At the contested 12-month review hearing on November 13, 2014, mother called Diana Zatarain, the worker from Moses House. Zatarain testified that she knew mother from watching three visits through an observation window. The first visit on October 15, 2014, lasted about 40 minutes. The visit ended early because minor cried. According to Zatarain, minor was not screaming. After the visit, Zatarain went into the room and noticed that it was really warm and minor looked cranky and tired.

The second visit was on October 28, 2014. The visit was scheduled to last 30 minutes but lasted 10 to 11 minutes. Minor was whimpering and crying. Minor appeared tired and cranky. When minor first arrived at the visit, mother called to minor and minor waved her hand. According to Zatarain, the foster mother grabbed minor's hand and pulled it down.

The third visit was on November 3, 2014; it lasted about 30 minutes. Zatarain thought that the interaction between mother and minor went well. Zatarain believed that there is a bond between mother and minor and minor recognized mother.

After the visits, Zatarain spoke with mother and wondered why mother did not let minor relax and rest in mother's arms. After the first visit, the social worker suggested that mother bring one toy instead of 20. Mother followed that advice for the second and third visit. Zatarain believed that the subsequent visits were more relaxed.

Zatarain observed a total of about one and one-half hours of mother and minor together. She concluded that they should have more visits. She agreed that consistent visitation was important to reunification. Mother was currently enrolled in the class, "Nurturing Parenting for Infants, Toddlers, and Preschoolers," which would be completed by February 2015. Zatarain had not reviewed any previous reports or history regarding mother's visits or minor's reactions.

The supervising social worker, Pierre Duong, was called by mother. The assigned social worker had resigned on October 4, 2014, and Duong assumed the case. The previous social worker had recommended services, but Duong recommended terminating them. Although Duong initially approved the report recommending continued services, after he took over the case, observed mother, reviewed her 10-year history with child protection, and learned of her 10-year drug history, he changed the recommendation.

When Duong observed the visits between mother and minor, he did not see an attachment between the two. Although minor recognized mother, she also recognized Duong after a few visits. When minor was tired or bored, she looked at the door. Duong

assumed that minor was looking for her foster mother. When the foster mother appeared, minor looked comfortable and peaceful. Since the maximum time of 18 months of services would end in February 2015, Duong did not think three more months of services would make a difference for mother.

Duong was reminded that mother's eighth child was not removed. Duong stated that there was a referral, but that child had the support of his father and that child's paternal grandmother. Since the father of the eighth child was not minor's father, and mother's relationship with that father had not been very long, Duong was unsure of the relationship's future.

Duong testified that parenting classes help parents bond with children. Mother was initially assigned to a class in October 2013. After a couple of false starts, she finally completed the class a year later in October 2014. Moreover, minor never lived with mother, and their only contact was at supervised visitations. Since July, the visits were more consistent, but mother did miss visits and was late. The visits, however, would be terminated early because minor would be crying.

Although mother had completed her group counseling, she had not completed her individual counseling. Mother also had tested positive for alcohol in August 2014, which was a concern since she was not to have any positive alcohol or drug test. Duong believed mother's risk was still high since she only had negative tests for four months.

After reviewing all of mother's records, and noting that mother only complied with her case plan recently, Duong changed his recommendation from continued services

to no services. Her consistency had been for such a short period of time, the risk to minor was still high.

The foster mother testified that minor had been with them for 15 months. The foster mother did not attend the visits, except the last two. During those visits, the foster mother observed that minor would cry and appeared uncomfortable. Although she did not observe the other visits, she could hear minor crying from the other room.

Mother testified that she began her drug program in January 2014, and finished in August 2014.⁴ Although she was to have negative tests, she tested positive for alcohol because she went out to eat with her boyfriend and had a couple of drinks. Mother acknowledged that she should not have consumed alcohol. She began her aftercare program in November 2014, which she intended to complete in January 2015.

Mother testified that she had asked for visits with minor while mother was in the hospital and the Ronald McDonald house, but never received them. Mother also claimed that no one informed her that minor had medical problems until mother's last visit. Mother later testified that the foster care social worker told mother about minor's health, but mother was not invited to attend any of the medical appointments and mother did not ask to attend. Mother testified that she had attended all of her visits since June except for July 31, 2014, when she took her new son in for his shots. She also missed visits while she was in the hospital and at the Ronald McDonald house and did not have gas or a ride to travel to the high desert to visit.

⁴ The record is inconsistent regarding the completion date. Mother testified she finished in August 2014; her counsel stated mother finished in October 2014.

Before moving to Riverside, mother admitted that she had one session of individual counseling in the high desert. Mother did not follow up to schedule more visits until March 2014, when she attended another individual counseling session. According to mother, however, she needed another referral to start counseling again but the former social worker never contacted her. Mother admitted that she had not asked to speak to a supervisor, and she did not pursue the matter further. Hence, mother never finished counseling.

Mother claimed that when she had a positive alcohol test, she had a drink at 7 p.m. the previous night and drug tested the following morning around 8:30 a.m. Mother also stated that she had learned in her drug treatment program that she was not to associate with other drug users. She denied knowing that her boyfriend had an outstanding warrant for a drug-related arrest, or that he had a drug history.

Mother admitted that she had her parental rights terminated as to five of her children, and a sixth child was in the dependency system in Riverside. Minor was in the custody of the court in San Bernardino, and her eighth child was living with her.

Mother thought that the court should give her more services because she deserved it. Mother also wanted minor returned to her if possible since mother was living with her newborn, her boyfriend, and his mother. Mother did indicate that she and her boyfriend wanted to get their own place.

Minor's counsel called the foster family agency worker, Jamie Street; she had been observing visits since October 2013. Street testified that the visits had not gone well, and during the last six months, minor cried. Street was constantly correcting

mother, telling her how to hold the baby appropriately, and told mother not to pinch minor on her cheeks. The pinching, which occurred in October 2013 left red marks on minor.

Street testified that minor saw Dr. Patel, her neurologist, for autistic disorder, language disorder, and unspecified delays. Minor also had difficulty swallowing, has had epileptic and reoccurring seizures. Minor also saw a cardiologist because of a heart defect that allowed blood to go to minor's head. If minor got upset, she would turn red and start shaking, which caused epileptic seizures. Mother had missed 10 visits during the last six months of the reporting period.

At every visit, mother was given information regarding the medical reports. Mother was shown the physician's medical reports. Moreover, Street explained minor's medical conditions to mother. Mother understood minor's medical problems since minor was not walking, and when minor had seizures, her eyes would roll backwards. Mother did ask questions, but she never asked to attend any of minor's medical appointments.

Although mother called Street to report that she had to cancel her visits because she was either in the hospital or at the Ronald McDonald House, mother never asked to have minor brought to her for visits. Mother missed all of the visits in May and June.

At the hearing, county counsel argued that at a 12-month hearing, the court shall continue the case only if it finds a substantial probability that the child will be returned to the physical custody of the parent at the section 366.26 hearing. Since that hearing in this case was in February 2015, only three months away, there was not a substantial probability that the child would be returned to mother's care. Mother did not complete

her case plan and did not contact and visit her child regularly. During this dependency, mother chose to have another child and devote her attention to the newborn.

Furthermore, mother tested positive for alcohol in the middle of her substance abuse program, had a bipolar issue which she had not addressed, and attended only one counseling session. Additionally, mother had not bonded with minor.

Minor's counsel argued that in addition to the visits that mother missed, the supervised visits were also terminated early, either because minor was crying or mother left. There was clear and convincing evidence that reasonable services were provided and mother was given referrals. It was mother's choice to move to Riverside.

The court reviewed the evidence and noted that mother was a stranger to minor during the first six-month period, but mother had an opportunity to work on the problem since she was given six more months of services. Mother did not. The record did not indicate that mother had asked for visits while in the hospital or at the Ronald McDonald House. Mother was offered counseling, which mother terminated. Mother was offered a drug program, which took mother a few attempts to complete. Mother never asked for help to complete her plan.

The court found by clear and convincing evidence that reasonable services were offered to mother over the past year. Mother made choices, including having another child, which interfered and delayed her reunification progress. Consequently, she was out of contact with minor for over two months.

The court addressed the three requirements necessary to continue services. The first was regular contact. Mother missed 10 visits during the previous six months, and

the visits she did attend went poorly. Mother did not request additional help. The second was mother's progress in resolving the problems that led to removal. Mother completed some components of her case plan, but was still working on her aftercare plan for substance abuse. She never finished the counseling, which would have helped her with the bonding issues. The third requirement was to provide for the safety and special needs of minor and completing the plan's objectives. The court found that mother failed that requirement. The court inferred from mother's testimony that mother thought since she now had another baby, CFS should continue with services and keep minor in "limbo" until mother was prepared for minor's return. The court stated that when mother stated she should receive more services because she "deserved" it, mother's focus was on mother, not minor.

The court went on to find that minor was less than three years of age at the time of removal. The court found by clear and convincing evidence that mother failed to participate regularly and make progress in her plan. The court found by a preponderance of evidence that custody by mother continued to be detrimental to minor; mother's progress was minimal and there was not a substantial probability that minor could be returned to mother within the statutory time frame; and CFS provided reasonable services to mother. The court also found it was in minor's best interest to consider termination of parental rights at a section 366.26 hearing. The court did not find a substantial probability that minor could be returned to mother by the date of the section 366.26 hearing, scheduled for February 2015. The court ordered termination of services, weekly supervised visits for one hour, and the setting of the section 366.26 hearing.

DISCUSSION

In her writ petition, mother contends the trial court erred in terminating services to mother and in setting a section 366.26 hearing based on the court's finding that reasonable services were provided to mother and there was not a substantial probability minor would be returned to mother within the 18-month time period.

A. STANDARD OF REVIEW

“The duty of a reviewing court is to determine whether there is any substantial evidence to support the juvenile court's findings. In making this determination, we must decide if the evidence is reasonable, credible, and of solid value, such that a reasonable trier of fact could find the court's order was proper based on clear and convincing evidence.” (*Curtis v. Superior Court* (2000) 80 Cal.App.4th 470, 474.)

B. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT REASONABLE SERVICES WERE PROVIDED TO MOTHER

At a 12-month review hearing, the juvenile court must “determine whether reasonable services that were designed to aid the parent or legal guardian to overcome the problems that led to the initial removal and continued custody of the child have been provided or offered to the parent or legal guardian.” (§ 366.21, subd. (f).) If reasonable services had not been provided, the court can continue the case for up to six months for a permanency review hearing. (§ 366.21, subd. (g)(2).) CFS “has the burden of showing by a preponderance of evidence . . . that reasonable reunification services have been provided. [Citations.]” (*In re Zeth S.* (2003) 31 Cal.4th 396, 410.)

“In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ [Citation.]” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 48.)

Although CFS’s six-month status report of April 2014 recommended continuing services, the report noted that mother was in partial compliance with her case plan and had not completed any components. Mother visited minor irregularly, missed drug tests, was unemployed, and attended only a few outpatient substance abuse sessions. At the six-month review hearing, the juvenile court found that reasonable services had been provided; mother did not appeal from that order.

At the 12-month hearing in October 2014, CFS recommended continuing services because mother was only in partial compliance with her case plan and had not completed any components. Mother’s counsel argued that mother’s intentions were “good.” Minor’s counsel disagreed with the recommendation, requested the matter to be set as contested, and requested the suspension of visitations.

The testimony provided during the hearing supported the juvenile court’s finding that reasonable services were provided to mother. In her writ petition, mother claims that no services were “put in place” to address the visitation concerns. Street, however, testified that she was constantly correcting mother. Parenting classes help parents bond with their children, but mother chose not to complete her classes until October 2014, one year after minor had been removed from mother’s custody. Visitation also affects

bonding. During the first six months of the dependency, mother's visitation was erratic and continued to be so. During the second six-month reporting period, mother did not visit for two months while her eighth child was hospitalized. She provided no evidence that she had asked for gas script or bus passes so she could visit minor. According to Street, when mother was in the hospital with her eighth child, she called to cancel her visits; mother never asked to have minor brought to mother. Mother's failure to visit consistently contributed to mother's lack of bonding with minor. This was not because mother received unreasonable services or was deprived of visits.

Mother also claims that she received unreasonable services because she was never advised of minor's medical condition. Again, Street, who supervised the visits, testified she gave mother the medical information on minor at every visit, and explained minor's condition to mother. Mother was even shown the physician's reports. Moreover, mother understood that minor had problems since minor was not walking, and her eyes would roll backwards when she had seizures. Although mother asked questions, she never asked to attend minor's medical appointments. Here, the juvenile court believed the testimony of Street. On appeal, we note that it is the exclusive function of the trier of fact to assess the credibility of witnesses and draw reasonable inferences from the evidence. (*People v. Barnes* (1986) 42 Cal.3d 284, 303; *People v. Hale* (1999) 75 Cal.App.4th 94, 105.)

The record shows that mother was 31 years old at the time of the 12-month review hearing. Moreover, prior to this dependency case, her more recent services were

terminated in 2011. She had a 10-year history with the child welfare system and knew what to expect since her rights to her six older children were terminated.

Here, if mother believed that services she was receiving were unreasonable, she should have raised the issue with her counsel or the court. She never did. Based on the above, we find substantial evidence supports the juvenile court's finding that services provided to mother were reasonable.

C. SUBSTANTIAL EVIDENCE SUPPORTS THE COURT'S FINDING THAT THERE WAS NOT A SUBSTANTIAL PROBABILITY MINOR WOULD BE RETURNED TO MOTHER

Although minor was under three years of age at the time she was removed, the juvenile court generously provided over 12 months of services to mother. In order for mother to have her services extended to the maximum time period of 18 months, the juvenile court must find "that there is a substantial probability that the child will be returned" and "safely maintained in the home within the extended time period." (§ 361.5, subd. (a)(3).)

Here, minor was detained at birth and never lived with mother. At the time of the 12-month hearing, minor was 15 months old. Mother's visitation never progressed beyond weekly, supervised visitation. Minor never visited mother at her home and never spent any extended visits, nights or weekends with mother. Minor was not bonded with mother and sought comfort and affection from her foster mother.

Although mother had given birth to eight children, mother behaved like a first-time mother. She over-stimulated minor with too many toys and activities. She did not

know how to calm minor. She did not know when minor was tired. She could not and did not read minor's cues. Even though minor would quiet down when mother held her, mother would immediately stimulate minor with another toy or activity, instead of letting minor fully calm down. Mother did not know how to hold minor when she was fussy.

Moreover, because mother did not start some of her required services until late in the proceedings, she would not complete her aftercare program until January 2015 and her perinatal program until February 2015, when her 18-month time limit would expire. She only had one individual counseling session more than 12 months earlier. She never completed her counseling component.

Based on the above, we find substantial evidence supports the court's findings that mother could not correct all of her problems, bond with minor, and have the child returned to her within the next 3 months. The court, therefore, properly terminated mother's services and set a section 366.26 hearing.

DISPOSITION

The writ petition is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

McKINSTER
Acting P. J.

We concur:

KING
J.

MILLER
J.