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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

M.V.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E062755

(Super.Ct.No. J250434)

OPINION

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

Monica Cazares for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, Dawn M. Messer, Deputy County Counsel, for
Real Party in Interest.

Petitioner M.V. (mother) has filed a petition for extraordinary writ pursuant to California Rules of Court, rule 8.452, challenging the juvenile court's finding that return of the child, D.,¹ to mother's care would pose a substantial risk of detriment to the child, and order setting a Welfare and Institutions Code² section 366.26 hearing.

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

I

FACTUAL AND PROCEDURAL BACKGROUND

On July 20, 2013, law enforcement found mother and D. sleeping in a car parked in a driveway. Mother admitted to being under the influence of methamphetamine. D. was not strapped in his car seat, the drugs were readily accessible to him, and there were minimal provisions for D. in the car. Mother stated that she had been using methamphetamine at least once a day since 2008; she had never participated in a drug rehabilitation program. Mother admitted that she had last used methamphetamine the day prior. Moreover, she had not lived with maternal grandmother since April 2013. Mother was arrested. D. was detained and placed with maternal grandmother.

¹ D. was born in March 2012.

² All further statutory references will be to the Welfare and Institutions Code, unless otherwise noted.

Mother had a lengthy criminal history, which included three charges for possession of controlled substance and possession of paraphernalia. She was on probation until February 20, 2016, for her 2011 drug charge. Mother's two older children, E. and G., were in legal guardianships with their maternal grandmother and their respective fathers.

On July 23, 2013, Children and Family Services (CFS) filed a section 300 petition under subdivisions (b) and (g), based in part on mother's substance abuse problem and incarceration. On July 24, 2013, the juvenile court found a prima facie case to detain D.

In the August 14, 2013 jurisdiction/disposition report, CFS recommended that D. remain in the maternal grandmother's home and family reunification services to be provided to mother.

The social worker had unsuccessfully attempted numerous telephone calls to mother, who remained homeless. Mother failed to attend two scheduled visits. The maternal grandmother informed the social worker that mother had been using methamphetamine on and off since she was 16 years old. The grandmother reported that "the whole family has tried to help [mother]." Mother had grown up in a home where the maternal grandfather used drugs for over 20 years. Mother, therefore, was exposed to drugs and used drugs at a young age and ran away from home.

Mother's drug use caused the maternal grandmother to get legal guardianship of mother's older children through family law court in 2010 during which time mother was residing with the maternal grandmother, and the grandmother was the children's primary

caretaker. The maternal grandmother had no contact with mother from 2010 until 2012 when the maternal grandmother learned that mother was pregnant. The maternal grandmother put mother in a hotel. When mother gave birth to D., they both tested negative for controlled substances so the maternal grandmother allowed them to live in her home. Mother was doing well for about a year, but on May 10, 2013, mother took D. to a WIC appointment and never returned. The maternal grandmother only learned of mother's homelessness and arrest through a phone call by the social worker on July 20, 2013. The maternal grandmother had begun the process of obtaining guardianship of D. in May, and had a pending court date on August 14, 2013, in family law court.

Mother's drug test from July 24, 2013, was negative for controlled substances, but the test was categorized as "abnormal." The social worker opined that the chances of mother reunifying with D. were slim based on her long history of using drugs with no attempts of rehabilitation.

Mother was not present at the August 14, 2013, jurisdiction/disposition hearing. The matter was continued to September 4, 2013, in order to allow time for CFS to complete services to alleged father. The juvenile court also ordered the maternal grandmother's legal guardianship case with family law court stayed.

At the continued September 4, 2013, hearing, the juvenile court accepted mother's waiver of rights. The court sustained the section 300 petition under subsections (b) and (g), and ordered mother to complete a family reunification plan.

In the March 4, 2014, status review report, CFS recommended that D. remain in his current placement with the maternal grandmother with continued reunification services to mother. Mother had been arrested on October 16, 2013, for her charges of possession of paraphernalia. Mother said that they were previous charges, and she was arrested while trying to take care of tickets at criminal court. Mother stated that she was given summary probation as long as she was drug testing and in a drug treatment program.

The social worker opined that the prognosis for the family was guarded because of mother's long substance abuse history and the fact that she had never cared for her other children. Mother was enrolled in services and continued to attend. Mother had attended one therapy session; the therapist reported that she had an unstable lifestyle. Mother was doing well in a drug treatment program and had been testing negative for drugs since December 2013. She was also participating in parenting classes.

Mother's visits were initially held at the CFS office. Mother interacted well with D. and was very engaging. However, it was also noted that on several occasions, mother was observed threatening D. if he was not following directions. The visits were moved to mother's perinatal group, and the maternal grandmother was transporting D. to the visits. There was a hostile relationship between mother and the maternal grandmother.

At the March 4, 2014, six-month review hearing, the juvenile court continued reunification services to mother and increased visitation to a minimum of one time per week of four hours.

In the September 4, 2014, 12-month status review report, CFS recommended continued reunification services to mother. CFS noted that mother had still not stabilized her residence. Mother had abruptly left the inpatient drug treatment program because of a conflict with a staff member. Mother, however, was able to complete the outpatient treatment program and parenting program. Recently, mother had failed to attend two visits on July 30, 2014 and August 6, 2014. Moreover, she had missed two random drug tests in July. The social worker was concerned that mother had not shown stability or consistency on a long term basis. The social worker noted in the report, “As such, worker believes that mother needs to demonstrate that she can overcome the hiccups that she will face throughout her lifetime and that she can rise above them and move forward in a positive direction for the safety and well being of her young son.”

Mother had completed an outpatient drug treatment and parenting course on August 5, 2014. While in her treatment program, mother provided clean drug tests. However, mother had missed three random drug tests through CFS from May through August 2014. Mother had also not completed her individual counseling. Mother claimed that she was living with a maternal aunt, but she was unable to provide a residence address. Mother also did not have a reliable phone number. CFS noted that mother had shown inconsistency in random drug testing and visitation since her completion of an outpatient drug treatment program. Mother also had a pending criminal court treatment program. Mother also had pending criminal court matters involving her drug charges which had to be resolved.

At the September 4, 2014, 12-month status review hearing, the juvenile court continued reunification services to mother and authorized visitation twice per week for two hours.

In the January 20, 2015, 18-month status review report, CFS recommended termination of reunification services to mother and setting a section 366.26 hearing to establish a permanent plan of adoption for D. CFS also recommended that mother's visits be reduced to once per week for one hour.

Mother had yet to complete therapy and continued to attend counseling sessions. She failed to maintain a stable residence during the juvenile dependency proceedings; she had lived with a maternal aunt and at least two boyfriends. She had the opportunity to reside in a sober living program, but chose to live with her boyfriend instead. She was currently living with a boyfriend in Chino in a re-converted garage. She was still unemployed. In October 2014, mother learned that she was six months pregnant. She did not know the father of the unborn child. She planned to give the unborn child up for adoption and was working with a private adoption agency.

Mother's boyfriend had two DUI convictions and was currently on probation for possession of explosives. He had not completed a fingerprint process per CFS's request. He was currently employed. Mother relied on him for her basic needs since she was unemployed.

The social worker reported, "[a]lthough mother has made a significant amount of progress towards reunification, mother had not completed her case plan goals.

Additionally, complicating factors such as mother's current pregnancy, her decision to give up the child for adoption, her current unemployment, her current living situation with a boyfriend who has a significant criminal history and her pattern of multiple failed relationships all impact worker's assessment that the child cannot be safely returned to mother's custody at this time."

Mother's supervised visits continued to go well, but she had not progressed to unsupervised and overnight visits because of her unstable residence and failure of other residence members to complete the fingerprint process. D. continued to reside with his maternal grandmother, who indicated a desire to adopt him in the event family reunification services failed.

The 18-month review hearing was set, contested by mother, and continued to January 26, 2015. Mother testified at the hearing that she had not used drugs since January 30, 2014. She was currently in her eighth session for counseling and completed two parenting programs. She had lived at her current residence for five months with her boyfriend in a one-bedroom home. She had been in a relationship with her boyfriend for about six months. Since July 2013 and prior to residing with her current boyfriend, mother did not have a stable residence. Mother missed two visits in the past six months because she was in labor in her current pregnancy.

After hearing arguments, the juvenile court stated: "You have engaged in your parenting twice, counseling on and off, but looking at the – all of the evidence before the Court, there was a turning point that you just kind of missed out, and that was when the

sober living was offered to you, and you decided that wasn't an option." The juvenile court also noted that the housing situation was not optimal for mother and D. The court then found that mother's progress had been moderate and terminated reunification services. The court authorized visitation by mother, to be supervised by the maternal grandmother. The court set a section 366.26 hearing for May 26, 2015.

II

ANALYSIS

In her writ petition, mother contends that the trial court erred in terminating services to mother and in setting a section 366.26 hearing based on the court's finding that the return of D. to mother would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of D.

A. Standard of Review

"The duty of the 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 F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474.)

B. Substantial Evidence Supports the Trial Court's Finding

Section 366.22, subdivision (a), provides in relevant part: After considering the admissible and relevant evidence, 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 social worker shall have the burden of establishing that detriment.”

In this case, mother contends that the juvenile court erred in finding that the return of D. to her care would pose a substantial risk of detriment. It is undisputed by the parties that mother completed the majority of her case plan. Participating in the services provided “is one consideration under section 366.22, subdivision (a).” However, under the statute, the juvenile court must also consider progress the parent has made towards eliminating the conditions leading to the child’s placement out of home. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.)

Here, at the time of the March 4, 2014, six-month hearing, mother was enrolled in services and a drug treatment program. Within the next six months, mother abruptly left the inpatient program and parenting program. Mother provided clean drug tests throughout her drug treatment program, but missed three random drug tests through CFS. Mother also continued to have unstable housing. She claimed she was living with a maternal aunt, but she failed to provide a residence address or reliable phone number.

By the time of the 18-month review hearing, mother had not completed therapy and continued to attend counseling sessions. During the length of the juvenile dependency proceedings, mother still had not established a stable residence. She had lived with a maternal aunt and at least two boyfriends. She had the opportunity to reside in a sober living program. She, however, chose to live with a boyfriend that she had been dating for only a month. Mother resided with her boyfriend for five months in a one-bedroom converted garage. She was still unemployed. Mother's boyfriend had two DUI convictions and was currently on probation for possession of explosives. He also had failed to complete a fingerprint process per CFS's request. Mother primarily relied on him for her basic needs. Moreover, mother was pregnant, and did not know the father of her unborn child.

In support of her argument, mother relies on *David B. v. Superior Court* (2004) 123 Cal.App.4th 768 (*David B.*). In *David B.*, the father's petition was granted and the matter was remanded to the juvenile court for further consideration. There, the juvenile court based its decision for refusing to return the child to the father's care, in part, on the fact the father lived in a home with his sister and her family. The agency, however, never indicated to father that his housing was an issue. The father had overnight visits with the child at the home, and he did everything the social worker asked of him to prepare that home for his child. (*Id.* at pp. 793-795.)

The facts in this case are different. Here, CFS has always expressed concern to mother about her lack of suitable housing. The juvenile dependency proceedings were initiated when mother was found sleeping in a car parked in a driveway with D. Mother did not have a stable residence at that time. During the pendency of the juvenile dependency proceedings, mother was still unable to prove stable housing. The court noted that a “turning point” for mother would have been to reside in a sober living program that was offered to her. Mother, instead, chose to move in with her current boyfriend that she had known for one month. And, by the time of the 18-month review hearing, mother had been residing with her boyfriend for only five months. Mother was unemployed and relied on her boyfriend to meet her needs. Hence, unlike the father in *David B., supra*, 123 Cal.App.4th 768, mother was residing with someone she had just recently met, as opposed to an immediate family member. Moreover, mother never had unsupervised or overnight visits with D. after commencement of the dependency. Furthermore, mother’s boyfriend, who was asked by CFS to complete a fingerprint process because of his criminal history, failed to comply. CFS, therefore, was unable to assess whether it was safe to return D. to mother’s care.

We also note that, although mother had not used drugs in a year by the time of her 18-month review hearing, mother has had a long history of drug use for six years. Mother’s one year of sobriety, given her long-term drug use, did not establish that she would and could continue to maintain sober.

Based on the above, we find that substantial evidence supports the juvenile court's finding that return of D. to mother's custody would create a substantial risk of detriment to him.

III

DISPOSITION

The writ petition is denied.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

KING
J.