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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.P. et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.D.,

Defendant and Appellant.

E064832

(Super.Ct.Nos. J256703 &
J256704)

OPINION

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, Kristina M. Robb, Deputy County Counsel for Plaintiff and Respondent.

The juvenile court terminated the reunification services of K.D. (Mother). (Welf. & Inst. Code,¹ § 366.21.) Mother contends the juvenile court applied an incorrect legal standard when terminating her services. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. FIRST DETENTION

Mother has two children: (1) A.D., a female born in 2008; and (2) A.P., a male born in 2014. The children were removed by San Bernardino County Children and Family Services (the Department) on September 26, 2014, due to Mother being a danger to herself or others (§ 5150). At the time of the removal, A.P. was eight months old.

At the detention hearing on October 1, 2014, the juvenile court ordered, “pending the development of the case plan, [the Department] shall provide services in order to reunify the child(ren) with the family.” (All caps omitted.)

B. JURISDICTION AND DISPOSITION

At the jurisdiction and disposition hearing on November 4, the juvenile court approved the reunification plan and ordered Mother to participate in it. The court informed Mother that reunification services could be limited to six months for a child under three years of age and for all children if the children are deemed a sibling group with a child under three years of age. The Department assessed Mother as requiring the following services: a substance abuse program, a domestic violence program, and parenting classes. The children were placed in their maternal relative’s home.

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

C. SECOND DETENTION

On January 28, 2015, the children were detained from the maternal relative and placed in a foster home. The Department filed a subsequent petition on January 30. (§ 342.) The Department's jurisdiction and disposition report for the subsequent petition reflects Mother had refused reunification services. Specifically, Mother refused to sign consent forms and case plans that would allow her to begin services. On February 5, the Department provided Mother with referrals for services. The services included counseling, parenting classes, domestic violence classes, anger management classes, and a psychological evaluation.

D. SIX-MONTH REVIEW

The six-month review hearing was held on June 2, 2015. The Department requested Mother's reunification services be terminated. The Department noted Mother had not participated in services or visited the children prior to the children being removed from their maternal relative's home. Mother had begun participating in services upon the children's removal from the relative's home. Mother took her first parenting class on March 11, and her first anger management class on March 20. Mother enrolled in an inpatient substance abuse treatment program on March 23, but walked away from the program on March 28. Mother had a positive drug test on February 5, failed to take her drug test on April 10, and tested negative on May 4. Mother visited the children for the first time on April 7.

The Department asserted services had been offered to Mother since September 2014, but Mother did not begin engaging in services until March 2015. The Department

pointed out that Mother only visited her children once, on April 7, and had failed to drug test in April. The Department argued it was not in the children's best interests to provide Mother with additional services. Mother's attorney argued that Mother had "completed parenting, domestic violence. She's supposed to finish anger management, is going to do her psychological evaluation, and has done 13 sessions of counseling so far. [¶] So [M]other is making a lot of progress."

The juvenile court found Mother had completed a significant portion of her case plan. The court granted Mother an additional six months of services to give her the opportunity to complete her case plan, in particular the substance abuse treatment.

E. 12-MONTH REVIEW

Mother went to a counseling session on July 8, and told the therapist she did not want to see him; Mother did not return to counseling. Mother enrolled in a second substance abuse treatment program on August 4, and attended group sessions throughout August. Mother was scheduled to take a drug test on August 27, but refused to take the test, walked away from the program, and was discharged. Mother tested negative for two drug tests and failed to take eight drug tests. A Department social worker reminded Mother on a monthly basis of the importance of complying with the case plan. Mother said she chose not to participate in the services because she did not agree with the initial reasons for the Department's involvement.

On November 4, 2015, the juvenile court held the 12-month permanency hearing in the case. (§ 366.21, subd. (f).) The Department and the children requested the

juvenile court terminate Mother's reunification services. Mother objected to the termination of reunification services.

The court made the following comments, "The mother was aware of her case plan, that a substance-abuse program was necessary. [¶] The Court notes from the mother's testimony that she really questions the allegations that were found true in this case and does not really believe that there were grounds really to detain the children. [¶] And to the Court that means that the mother has not taken responsibility for why the children were removed, has not addressed the significant issues that led to the children being removed. [¶] Mother testified that she did not believe that domestic violence was a problem. She did not believe that she needed a substance-abuse program. And she certainly acknowledged she was aware that she was not testing when she was required to be testing randomly. [¶] So the Court also notes that she testified that the anger management was really not helpful that she attended.

"All of this points to what the therapist for the mother gave by way of an update that is contained in the report, and that is that she has been guarded, has not really opened up to the therapist, and has made poor progress. [¶] The Court then notes that the mother has not completed her case plan, has not demonstrated both taking responsibility and benefitting from part of the case plan that she took care of and attended. [¶] The social worker notes in the report that the mother . . . indicated that she has not continued with her Court-ordered case plan because she does not agree with the initial reasons for the [Department's] involvement. [¶] So with that, the Court is in agreement to terminate services to the mother."

The court then made its findings. The court found by a preponderance of the evidence that returning the children to Mother's custody would create a substantial risk of detriment to the children's safety, protection, or physical and emotional well-being. The court ordered Mother's reunification services be terminated.

The children were not in a concurrent planning home, but the children's foster parent was willing to continue caring for them. The court scheduled a permanent plan review hearing for May 4.

DISCUSSION

Mother contends the juvenile court applied an incorrect legal standard when terminating her reunification services.

"Discretion is delimited by the applicable legal standards, a departure from which constitutes an 'abuse' of discretion." (*People v. Harris* (1998) 60 Cal.App.4th 727, 736.) Thus, a court abuses its discretion when it applies an incorrect legal standard. (*People v. Carter* (2014) 227 Cal.App.4th 322, 328.)

"[C]ourt-ordered [reunification] services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care." (§ 361.5, subd. (a)(1)(A).) However, if a child is under three years of age on the initial date of removal, as A.P. was in this case, then reunification services "shall be provided for a period of six months from the dispositional hearing . . . but no longer than 12 months from the date the child entered foster care." (§ 361.5, subd. (a)(1)(B).) When there is more than one child, and one of the children is under the age of three years at the time of the initial removal, such as A.P, then services may be limited for the older

child in accordance with the limitations for the younger child. (§ 361.5, subd.

(a)(1)(C).)

Despite the foregoing rules, “court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown . . . that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian.” (§ 361.5, subd. (a)(3).) The court must “specify the factual basis for its conclusion that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period.”

(§ 361.5, subd. (a)(3).)

The juvenile court did not need to provide a reason or cite a particular legal standard for terminating services at the 12-month hearing, because that is the time when services must end, unless there is a reason to extend services for another six months. (§ 361.5, subd. (a).) Because the juvenile court did not need to cite a particular legal standard when terminating Mother’s services at the 12-month review hearing, we conclude the juvenile court did not err.

Mother contends the juvenile court failed to make a finding as to whether there was a substantial probability of the children returning to Mother’s care if the services

were continued to the 18-month hearing. The statutory scheme provides services will terminate at the 12-month hearing (§ 361.5, subd. (a)(1)(A)) unless the court finds “there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period,” i.e., an additional six months (§ 361.5, subd. (a)(3)). Thus, the statute provides services will end at the 12-month hearing unless there is an affirmative finding that the children are likely to return to their parent(s). If that finding is made, then services will be extended to the 18-month hearing.

Mother is suggesting the opposite. Mother is suggesting services must continue to the 18-month hearing unless the court makes a finding that it is *not* likely the children will return to the parent(s). The court was not required to make such a finding prior to terminating services at the 12-month hearing.

Mother contends the finding of no substantial probability of return is required by section 366.21, subdivision (g)(1).² Section 366.21 addresses the procedures for returning a child to the physical custody of his/her parent. Former section 366.21, subdivision (g)(1) provided, “If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

² We are discussing the version of section 366.21 that was in effect in 2015.

“(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or legal guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following[.]”

The foregoing subdivision does not concern termination of reunification services. Rather, the subdivision provides the juvenile court with the authority to continue the case to the 18-month mark “only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian.” (§ 366.21, subd. (g)(1).) Section 361.5, subdivision (a)(3), then gives the court the authority to continue reunification services to the 18-month mark if it again “finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within the extended time period or that reasonable services have not been provided to the parent or guardian.”

Again, the juvenile court is not required to make a finding that there is *not* a substantial probability of the child being returned in order to *terminate* services. Rather, the court must make an *affirmative* finding that there *is* a substantial probability of the child being returned if it wants to *continue* the case and *extend* services to the 18-month point. (See *M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 178 [the court can only continue the case to the 18-month review if it finds a substantial probability the child will be returned to the parent].) Accordingly, Mother's reliance on section 366.21, subdivision (g)(1) is not persuasive.

Mother contends that because the court did not return the children to Mother and did not order a plan of long-term foster care, the court was required under section 366.21, subdivision (g) to continue Mother's reunification services until the 18-month review hearing.

The juvenile court ordered a planned permanent living arrangement (PPLA) for the children. A PPLA is an "arrangement[], other than adoption, legal guardianship and relative placement, which also could provide a level of security and stability for [the] child." (*In re Stuart S.* (2002) 104 Cal.App.4th 203, 207.) For example, a PPLA might consist of a long-term placement in a specifically identified foster home; emancipation, for an older teen; or, for Indian children, a placement identified by the child's tribe. (See *id.* at p. 208; see also § 366.26, subd. (c)(1)(B)(vi)(II).)

Contrary to Mother's position, the court did order a plan of long-term foster care. The court ordered, "the children's permanent plan [be] placement with Ms. P a fit and willing foster parent with the goal of adoption." In other words, the children were

permanently placed in long-term foster care until an adoptive home could be located. Because the court ordered long-term foster care for the children, we find Mother's argument to be unpersuasive.

In Mother's Appellant's Reply Brief, she asserts she raised three arguments in her Appellant's Opening Brief: (1) the juvenile court erred by applying an incorrect legal standard; (2) the termination of Mother's reunification services was not supported by substantial evidence; and (3) it was in the children's best interests to extend her services.

We addressed Mother's legal standard contention *ante*. In Mother's Appellant's Opening Brief and Appellant's Reply Brief, Mother's substantial evidence argument appears to be a harmless error/prejudice argument, because she combines the terms "substantial evidence," "harmless error," and "prejudicial," and did not separate the issues via a second point heading. (Cal. Rules of Court, rule 8.204(a)(1)(B) [separate point headings].) However, to the extent Mother intended to assert a separate substantial evidence issue, we will briefly address it.

Mother asserts there was insufficient evidence to support the finding that there was not "a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time." (§ 366.21, subd. (g)(1).) As we have explained *ante*, the court need not make this negative finding, i.e., that there is *not* a substantial probability of return. Nevertheless, we will briefly address this point. One of the relevant factors in deciding if there *is* a substantial probability of the child returning to the parent's

custody is “the parent . . . has made significant progress in resolving problems that led to the child’s removal from the home.” (§ 366.21, subd. (g)(1)(B).)

The juvenile court found true the allegation that Mother “suffers from substance abuse related issues, which adversely impacts her ability to provide care and support to her children.” (§ 300, subd. (b).) Mother walked away from two substance abuse programs within nine months. Between the six-month and 12-month hearings, Mother tested negative for drugs twice and failed to test eight times. The foregoing is substantial evidence from which the juvenile court could find Mother failed to make significant progress in resolving her substance abuse issues. Accordingly, there is substantial evidence to support the unneeded negative finding that there was not “a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time.” (§ 366.21, subd. (g)(1).)

As to the third issue that Mother contends she raised—that it was in the children’s best interests to extend her services—again, this point was not raised under a separate heading in her Appellant’s Opening Brief or Appellant’s Reply Brief, and in both briefs, it appears to be part of a harmless error/prejudice argument. (Cal. Rules of Court, rule 8.204(a)(1)(B) [separate point headings].) Nevertheless, to the extent Mother intended to raise a separate issue, we will briefly address it.

We have explained, *ante*, that sufficient evidence supports a finding that there was not a substantial probability of the children being returned to Mother’s physical custody within the six-month timeframe. It would not be in the children’s best interests

for Mother to receive six more months of services when there is not a substantial probability of the children being returned to her care. In other words, the services would only be in the children’s best interests if they were likely to return to Mother’s physical custody. The children’s interests are not served by Mother receiving services when the children are unlikely to be in her physical custody. As explained *ante*, there is sufficient evidence supporting the finding that it is not substantially probable the children will return to Mother’s care within six months, so therefore, it is not in the children’s best interests for Mother to receive six more months of services.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

HOLLENHORST
Acting P. J.

SLOUGH
J.