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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.P., a Person Coming Under the
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

P.S.,

Defendant and Appellant.

E065378

(Super.Ct.No. RIJ106582)

OPINION

APPEAL from the Superior Court of Riverside County. Jacqueline C. Jackson,
Judge. Affirmed.

Leslie A. Barry, under appointment by the Court of Appeal, for Defendant and
Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman and
Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

Defendant and appellant P.S. (mother) challenges the juvenile court's order denying her reunification services pursuant to Welfare and Institutions Code¹ section 361.5, subdivision (b)(10) and (b)(11). She contends that the court erred in denying her services because she made reasonable efforts to treat the problems that had led to the removal of her nine other children. We affirm.

PROCEDURAL BACKGROUND

On October 7, 2015, the Riverside County Department of Public Social Services (DPSS) filed a section 300 petition on behalf of D.P. (the child), who was three days old. A first amended petition was filed on October 9, 2015, alleging that the child came within section 300, subdivisions (b) and (j).

At the detention hearing on October 13, 2015, the court detained the child in foster care. On October 20, 2015, the child was placed with his paternal great aunt.

Jurisdiction/Disposition

The social worker filed a jurisdiction/disposition report on November 10, 2015, and recommended that the court sustain the petition and declare the child a dependent. The social worker recommended that the court deny reunification services to mother pursuant to section 361.5, subdivision (b)(10) and (b)(11).

The social worker reported that, on October 5, 2015, a referral was received alleging general neglect. The child was born weighing 5.9 pounds. It was reported that

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

mother only kept three prenatal appointments; she was a no-show for one appointment and cancelled three appointments. Furthermore, mother suffered from cognitive delays, which impaired her ability to care for the child, and the child's father (father)² had unresolved mental health issues. The social worker reported that mother and father (the parents) were living in a motel room and were almost one month behind in rent. They later moved to an apartment. Mother was unemployed and had never worked. She collected Social Security for a brain injury. Mother said she had completed two parenting courses. However, she agreed that more parenting classes and counseling would be helpful.

Regarding visitation, the social worker reported that mother had visits with the child, as ordered by the court. She had her first visit on October 19, 2015. The social worker observed mother sitting on a couch with the child lying beside her. Mother had her cell phone in her hand with father on video, since he chose not to visit the child. According to the foster parent who supervised the visit, mother was more interested in getting father on the phone than bonding with the child. She had father on the phone when she tried to feed the child. Right after she started to feed him, she stopped and changed his diaper, even though the diaper was clean. Mother ended the visit 15 minutes early. The foster mother stated that mother did not hold the child or really bond with him. At the next visit, the foster mother observed that mother was not very attentive to

² Father is not a party to this appeal. Thus, we will mainly discuss mother in the procedural background.

the child or his needs, and she did not say goodbye to him. The social worker opined that mother had an apparent disconnect and lack of interest toward the child.

The social worker also reported on mother's dependency history regarding the child's nine half siblings. On September 4, 2003, a section 300 petition was filed on behalf of K.G. (child 1), K.H. (child 2), J.H. (child 3), and J.H. (child 4), pursuant to subdivisions (b) and (g). It was alleged that mother had a history of leaving the children unsupervised, and that she had disabilities due to brain surgery, which impaired her ability to provide regular and adequate care to her children. It was also alleged that father had a spousal abuse conviction and a mental health diagnosis. The children were declared dependents and placed with mother under a family maintenance plan. Then, on March 22, 2004, another petition was filed on behalf of K.H. (child 5), pursuant to section 300, subdivisions (b) and (j). It alleged that the parents had an open family maintenance case, but had failed to benefit from the services provided. As a result, child 5 was detained out of home. Then, a section 387 petition was filed on behalf of the first four children (1-4), citing the same allegations. They were also detained out of home. The court sustained the section 387 petition and ordered reunification services for mother. In May 2004, the court declared child 5 a dependent and ordered reunification services for mother. However, reunification services as to all five children were terminated at the 18-month hearing. The court terminated the parents' parental rights as to four of the children on November 22, 2006, and one of them on February 27, 2007. Child 3 and child 4 were adopted on November 27, 2007. Child 2 was adopted on

December 11, 2007, and child 5 was adopted on August 22, 2008. Child 1 was adopted on December 11, 2008.

On July 14, 2009, a section 300 petition was filed on behalf of J.H. (child 6), pursuant to subdivisions (b) and (g). At the time child 6 was born, mother admitted that she did not have any provisions to care for her. Mother abandoned her at the hospital on July 13, 2009. As a result, the court detained child 6. The court later declared her a dependent and denied services to mother, pursuant to section 361.5, subdivision (b)(10) and (b)(11). Mother's parental rights as to child 6 were terminated on June 14, 2010, and she was adopted on August 10, 2010.

On November 15, 2011, a section 300 petition was filed on behalf of E.H. (child 7) and A.S. (child 8). They were detained out of home the next day. The court later sustained the petition and declared them dependents. The court denied reunifications services to mother, pursuant to section 361.5, subdivision (b)(11). It terminated her parental rights on July 23, 2013.

On December 24, 2013, a section 300 petition was filed on behalf of N.S. (child 9), pursuant to subdivisions (b) and (j). Child 9 was born with respiratory distress and a heart condition, and mother admitted that she received no prenatal care and had limited provisions for child 9. It was confirmed that mother had cognitive delays that impaired her ability to care for the child, and that father had unresolved mental health issues. As a result, child 9 was placed into protective custody upon discharge from the hospital. Child 9 was declared a dependent on March 13, 2014, and services were denied pursuant to

section 361.5, subdivision (b)(10) and (b)(11). Parental rights were terminated on October 14, 2014.

On December 14, 2015, DPSS filed a second amended petition in the instant case. It alleged that the child came within section 300, subdivisions (b) (failure to protect) and (j) (abuse of sibling). The petition included the allegations that mother had an extensive dependency history as to her nine other children. Mother was provided with extensive services but failed to benefit, which resulted in her parental rights being terminated. The petition further alleged that mother had cognitive delays that impaired her ability to appropriately care for the child, and that father had been diagnosed with mental health issues such as schizophrenia and posttraumatic stress disorder. The petition also alleged that the child's half sibling was declared a dependent on March 13, 2014, pursuant to section 300, subdivisions (b) and (j), and that the child was at risk of similar harm.³

The court held a contested jurisdictional hearing on December 14, 2015. The court sustained the second amended petition and set a dispositional hearing for January 13, 2016.

The social worker filed an addendum report on January 7, 2016. She reported that mother had been provided with reunification services several times in the past, yet failed to benefit from them. Although the parents stated that they were currently participating in services, they had still not demonstrated their ability to safely parent the child.

³ We note that the petition refers to the child's half sibling as N.H. However, it appears to be referring to child 9, whose initials are actually N.S.

In a subsequent addendum report, the social worker reported that mother visited the child on January 9, 2016. The foster mother said mother had very little contact with the child. She fed him, but refused to change his diaper. At another visit on January 17, 2016, at the parents' apartment, mother fed the child. When father asked her to change the child's diaper, mother stated: "No. I am not supposed to be around babies or have anything to do with them."

The court continued the dispositional hearing, and it was held on February 1, 2016. Mother's counsel argued that mother was actively participating in services and making reasonable efforts. County counsel argued that DPSS was not asking the court to deny services just because mother had previously had services denied. Rather, mother had not presented any evidence of completing services during the time period after she was denied services in 2014, with regard to child 9. County counsel also pointed out that mother and the child were not bonded; thus, it would not be in the child's best interest to offer mother services. The child's counsel joined in county counsel's argument.

After listening to the arguments, the court stated that it had reviewed the petitions on the initial children detained from mother on September 4, 2003, and noticed that "many of the same issues occurred then as occurred now." The court further observed that mother had been given services multiple times for multiple children, yet none of her children had been reunified with her. The court noted that mother was currently participating in programs, but was concerned that she did not start participating right after child 9. Moreover, there was no evidence that the programs she was participating in

currently were having any impact on her relationship with the child, or how she was caring for him. In fact, the reports showed that she had little contact with the child during visits, and she refused to change diapers. The court adjudged the child a dependent, and found, by clear and convincing evidence that section 361.5, subdivision (b)(10) and (b)(11), applied to mother; thus, it denied her reunification services.

ANALYSIS

Substantial Evidence Supports the Court's Order Denying Mother Reunification Services

Mother argues that there was insufficient evidence to support the court's order denying her reunification services under section 361.5, subdivision (b)(10) and (b)(11). She specifically claims that the court improperly discounted her current efforts and instead focused solely on her history to support the order. We disagree.

“As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible. [Citation.]’ [Citations.] Section 361.5, subdivision (b) sets forth certain exceptions—also called reunification bypass provisions—to this ‘general mandate of providing reunification services.’ [Citations.] [¶] Section 361.5, subdivision (b) ‘reflects the Legislature’s desire to provide services to parents only where those services will facilitate the return of children to parental custody.’ [Citations.] When the court determines a bypass provision applies, the general

rule favoring reunification is replaced with a legislative presumption that reunification services would be “an unwise use of governmental resources.” [Citation.]” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1112.)

Under section 361.5, subdivision (b)(10) and (b)(11), the court may deny reunification services to a parent who has failed to reunify with the child’s sibling or half sibling or whose parental rights to the child’s sibling or half sibling were terminated. Denial of services under these provisions requires the court to find that the parent “has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent.” (§ 361.5, subd. (b)(10) & (b)(11).) An order denying services is reviewed for substantial evidence. (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 915 (*R.T.*)) “All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. Where there is more than one inference which can reasonably be deduced from the facts, the appellate court is without power to substitute its deductions for those of the trier of fact.” (*Francisco G. v. Superior Ct.* (2001) 91 Cal.App.4th 586, 600.)

Contrary to mother’s position, the court did not focus solely on her dependency history to support its order bypassing services. Rather, it observed that mother had participated in services multiple times in the past. In spite of having participated in family maintenance and reunification services for over two years, mother was unable to reunify with her nine other children.

Moreover, the current petition alleged that mother was unable to reunify with her nine other children because of “substantiated allegations of general neglect related to cognitive impairment.” It further alleged that mother was provided with extensive services but failed to benefit, and that she still had cognitive delays that impaired her ability to appropriately care for the child. We acknowledge mother’s assertion that she started services almost immediately after the child was detained and had “made good progress.” Section 361.5, subdivision (b)(10) and (b)(11), require a parent to make a reasonable effort to treat the problems that led to the removal of another child. “We do not read the ‘reasonable effort’ language in the bypass provisions to mean that *any* effort by a parent, even if clearly genuine, to address the problems leading to removal will constitute a reasonable effort and as such render these provisions inapplicable. It is certainly appropriate for the juvenile court to consider the *duration, extent and context* of the parent’s efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness. And while the degree of progress is not the *focus* of the inquiry, a parent’s progress, or lack of progress, both in the short and long term, may be considered to the extent it bears on the *reasonableness* of the effort made. [¶] Simply stated, although success alone is not the sole measure of reasonableness, the *measure* of success achieved is properly considered a factor in the juvenile court’s determination of whether an effort qualifies as reasonable.” (*R.T., supra*, 202 Cal.App.4th at pp. 914-915.)

The record shows that mother started taking parenting classes on November 9, 2015. Despite taking more parenting classes, on top of the ones she had previously completed, the social worker was still concerned that mother's cognitive delays inhibited her ability to properly and safely care for the child. The foster mother, who supervised visits, reported that mother and father had no visits at her home during the month of December 2015, and their last visit was on Thanksgiving. She said that the only time they saw the child was when she took him to see them. Furthermore, the foster mother reported that mother had to be told to pick up the child at visits. When she did hold him, it was for no more than five minutes. The foster mother also said that mother never changed diapers. She said *she* would have to change the child after the parents would leave the visits because they never ensured that the child had a clean diaper. The foster mother further noted that mother never asked to participate in the more mundane tasks of parenting, such as bathing and doing laundry. At a visit on January 9, 2016, the foster mother reported that mother had very little contact with the child. Mother fed the child, but refused to change his diaper. Mother was there for two hours and went outside to smoke twice. At a visit on January 17, 2016, father had to direct mother to feed the child. Then, when father asked mother to change the child's diaper, she replied, "No. I am not supposed to be around babies or have anything to do with them."

Mother's behaviors demonstrate that she still lacked basic parenting skills. She continued to be unable to appropriately care for the child, despite her participation in parenting classes. As the court remarked, mother was having very little contact with the

child, refused to change his diapers, and did not appear to be interacting with him at visits. The court properly considered the duration, extent and context of mother's efforts, as well the quality and quantity of those efforts, when evaluating the effort for reasonableness. (*R.T.*, *supra*, 202 Cal.App.4th at pp. 914-915.) Her participation in services effected very little change in her ability to properly care for the child.

Viewing mother's history in its totality, we conclude there is substantial evidence to support the court's finding regarding lack of subsequent reasonable effort. (*R.T.*, *supra*, 202 Cal.App.4th at p. 915.) Accordingly, the court properly denied reunification services pursuant to section 361.5, subdivision (b)(10) and (b)(11).

DISPOSITION

The judgment is affirmed.

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HOLLENHORST
Acting P. J.

We concur:

McKINSTER
J.

MILLER
J.