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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

ELIZABETH B.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN  
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Real Party in Interest.

F063866

(Super. Ct. No. JD125868-00)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Louie L. Vega, Judge.

Michelle R. Trujillo, for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Elizabeth M. Giesick, Deputy County Counsel, for Real Party in Interest.

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\* Before Levy, Acting P.J., Gomes, J., and Kane, J.

Elizabeth seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested six-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing as to her one-year-old daughter, G. We deny the petition.

### **FACTUAL AND PROCEDURAL SUMMARY**

In January 2011, newborn G. was taken into protective custody by the Kern County Department of Human Services (department) because of Elizabeth's history of mental illness and methamphetamine use and failure to reunify with four of her other children. Her parental rights to them were terminated in 2008 and 2009.

Elizabeth told the investigating social worker that she began smoking marijuana and methamphetamine at the age of 12. At the age of 14, she was diagnosed with manic depressive disorder. She acknowledged that her use of methamphetamine resulted in her failure to regain custody of her children, but said she stopped smoking methamphetamine when she found out she was pregnant with G. G.'s father, George, told the social worker he and Elizabeth lived together and he smoked marijuana and methamphetamine.

In May 2011, the juvenile court exercised its dependency jurisdiction and ordered the department to provide Elizabeth and George reunification services. Elizabeth's services plan required her to participate in counseling for parenting, child neglect and substance abuse and to submit to random drug testing. By that time, Elizabeth had completed a 45-day residential drug treatment program which also included parenting and child neglect counseling. She was also participating in outpatient substance abuse counseling and testing negative for drugs.

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

Elizabeth continued to participate in her recovery until she left the sober living program and tested positive for methamphetamine in August 2011. In September, she returned to the program and subsequently tested negative.

In October 2011, Elizabeth's substance abuse counselor, Heather Hillhouse, authored a letter on her behalf stating that she attended two 90-minute group sessions a week which addressed relapse prevention and social support skills. In addition, Elizabeth met with Ms. Hillhouse once a week for an hour to review her treatment goals and discuss her progress. She also attended a minimum of four self-help meetings each week and was looking for a new sponsor as her previous sponsor was unable to keep her commitment. Ms. Hillhouse said that Elizabeth was expected to complete outpatient treatment in mid-December 2011.

In its report for the six-month review hearing scheduled for December 2011, the department recommended that the juvenile court terminate reunification services for Elizabeth and George based on her relapse and his continuing drug use. The department did not alter its recommendation after receiving Ms. Hillhouse's letter. In a supplemental report, the department opined that Elizabeth was only able to maintain sobriety in a controlled environment and had not made sufficient progress to warrant continuing services.

On December 2, 2011, the juvenile court conducted a contested six-month review hearing. Ms. Hillhouse testified that Elizabeth had made excellent progress since her return to sober living and was still scheduled to complete outpatient treatment in mid-December. She attributed Elizabeth's renewed progress to her focus on her own recovery rather than on George's. She said that Elizabeth left sober living because George was struggling with his recovery and Elizabeth wanted somewhere safe for him to go. Ms. Hillhouse said she and Elizabeth discussed the negative effect George had on Elizabeth's recovery and Ms. Hillhouse disapproved of Elizabeth's leaving sober living. However,

she also said that Elizabeth took the initiative to return to treatment and had disengaged from George and set boundaries in their relationship.

Elizabeth and George also testified. Elizabeth said she was ready for a new life and committed to stay in the program. She was, however, evasive about whether she intended to maintain a relationship with George. George testified that he last used methamphetamine approximately a week and a half before the hearing. He acknowledged that he was struggling with recovery and said he was homeless and drinking a lot more alcohol. He could not, however, explain why he continued to use drugs or what assistance he needed, but said he was willing to enter residential drug treatment.

At the conclusion of the hearing, the juvenile court terminated reunification services and set a section 366.26 hearing. This petition ensued.<sup>2</sup>

### **DISCUSSION**

Elizabeth contends the juvenile court erred in terminating her reunification services. We disagree.

The juvenile court may terminate reunification services at the six-month review hearing where, as here, the child was under the age of three years when initially removed and the court finds by clear and convincing evidence that the parent failed to participate and make substantive progress in court-ordered services and that there is not a substantial probability the child will be returned to parental custody by the 12-month review hearing. (§ 366.21, subd. (e).)<sup>3</sup>

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<sup>2</sup> George did not file a writ petition.

<sup>3</sup> Section 366.21, subdivision (e) provides in relevant part:

“If the child was under three years of age on the date of the initial removal, ... and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment

Elizabeth contends that she regularly participated in and made substantive progress in her court-ordered services, citing her near completion of her substance abuse counseling, her progress in maintaining sobriety and her recommitment to recovery following her relapse. We conclude substantial evidence supports the juvenile court's finding she did not regularly participate and make substantive progress.

A parent's participation and progress in court-ordered services are judged on the totality of the circumstances. In this case, the juvenile court evaluated Elizabeth's participation and progress not only with respect to her recent efforts, but also in the context of her long-standing history of drug use. Though Elizabeth successfully rebounded from her relapse by reentering sober living, she also demonstrated her willingness to jeopardize her sobriety for George against the sound advice of her counselor, Ms. Hillhouse. Further, the juvenile court had reason to believe Elizabeth could relapse, not just because of her prior drug history, but also because she equivocated in her testimony about the future of their relationship. In addition, George's testimony demonstrated he had virtually no insight into his drug abuse. Under the circumstances, the juvenile court could reasonably conclude that, on balance, Elizabeth's recent progress was not sufficiently substantive, given her history and potential for relapse, to warrant continuing reunification efforts.

Elizabeth further contends that there was a substantial probability G. could be returned to her custody by the 12-month review hearing. In order to find a substantial probability of return, the juvenile court must find that the parent consistently and

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plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, ... may be returned to his or her parent ... within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.”

regularly contacted and visited the child, made significant progress in resolving the problems requiring the child's removal, and demonstrated the capacity and ability to complete the objectives of the reunification plan and provide for the child's safety and well-being. (§ 366.21, subd. (g)(1)(A)-(C).)

In this case, there is no dispute that Elizabeth regularly visited G. and was on schedule to complete her court-ordered services by mid-December 2011. In addition, the 12-month review hearing would have been set on or about mid-March 2012.<sup>4</sup> The question then is whether Elizabeth made significant progress in addressing her drug abuse such that G. could be safely returned to her on or before that date. The juvenile court found that she had not and we concur for the same reasons we concluded above that she failed to make substantive progress in her court-ordered services.

On this record and for the reasons discussed above, we find no error in the juvenile court's orders terminating reunification services and setting a section 366.26 hearing.

### **DISPOSITION**

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

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<sup>4</sup> Section 361.5, subdivision (a)(1)(B) establishes when the 12-month review hearing is to occur and provides in relevant part: "For a child who, on the date of initial removal from the physical custody of ... her parent ... , was under three years of age, court-ordered 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 as defined in Section 361.49 unless the child is returned to the home of the parent ...." Section 361.49 provides that "a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing ... or the date that is 60 days after the date on which the child was initially removed from the physical custody of ... her parent ...."

In this case, the earlier of the two dates is the jurisdictional hearing which was conducted on March 14, 2011. Twelve months hence is March 14, 2012.