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

ERNEST G.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F064053

(Super. Ct. Nos. JD126187, JD126188,
JD126189, JD126190 & JD126191)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jon E. Stuebbe, Judge.

David Duket, for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Kelley D. Scott, Deputy County Counsel, for Real Party in Interest.

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* Before Gomes, Acting P.J., Kane, J., and Detjen, J.

Ernest 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 366.26¹ hearing as to his five children. We will deny the petition.

FACTUAL AND PROCEDURAL SUMMARY

In March 2011, while Ernest was incarcerated in state prison, the Kern County Department of Human Services (department) removed his five children ranging in age from two to seven years from the custody of their mother. The mother and the children were living in extremely unsanitary conditions and the mother was under the influence of a controlled substance. The children were initially placed in separate foster homes.

Ernest has a criminal history dating back to 1999, which includes convictions on various weapons charges and battery. In 2010, he was convicted for being in possession of a destructive device for having a pipe bomb.

In early May 2011, the juvenile court adjudged the children dependents based on the mother's drug use and set the dispositional hearing for June. In its report for the dispositional hearing, the department reported that several of the children were manifesting violent and sexualized behavior. N., Ernest's three-year-old son, required crisis stabilization because he threatened to kill his two-year-old sister, E. On another occasion, N. punched E. in the face. He also threatened his foster mother and killed a four-month-old chicken by wringing its neck, which he bragged about. P., Ernest's six-year-old daughter, was found fully clothed on top of another child, attempting to kiss her. P. stated that she witnessed her mother lying on top of her boyfriend naked and kissing another female.

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

In June 2011, the juvenile court conducted an uncontested dispositional hearing. Ernest waived his appearance and was represented by counsel. The juvenile court ordered the children removed from parental custody and ordered the mother and Ernest to complete parenting/child neglect instruction and submit to random drug testing. The juvenile court also ordered the mother to participate in conjoint counseling, as well as counseling for substance abuse and sexual abuse awareness; and Ernest to participate in counseling for domestic violence as a perpetrator. The juvenile court advised the parents that their failure to participate regularly and make substantive progress in their court-ordered services could result in termination of reunification efforts after six months because E. was under the age of three years when the children were removed from parental custody.

On July 31, 2011, Ernest was released from custody on parole. While in custody, there were no services available to him. By December, he and the mother completed the required parenting class. They also tested negative for drugs and regularly visited the children.

In December 2011, the department submitted its six-month status report in which it recommended that the juvenile court terminate reunification services for Ernest and the mother because they did not complete all of their court-ordered services. In addition, the department questioned whether Ernest and the mother benefited from their parenting classes given the inconsistent quality of their visits. The department reported that the children were placed together with a relative who wanted to adopt them.

In January 2012, the juvenile court conducted a contested six-month review hearing. Ernest and the mother testified about their efforts to complete their court-ordered services. Ernest testified that he signed up for his parenting class in mid-September after he was given a bus pass. He did not sign up sooner because it was conducted out of town and he did not have a car. He said he was in the process of

signing up for the domestic violence class. It was also out of town and he just needed to “get down there, sign up, start it.” He testified he had not made much effort to sign up for classes after he was released from prison. He said he visited the children regularly with the mother and that visits went well.

The mother testified that she had not signed up for conjoint counseling and sexual abuse awareness because she was so busy with her other classes. Ernest and the mother testified that they did not work.

Ernest’s attorney argued that Ernest substantially completed his case plan, including domestic violence counseling which he said Ernest partially satisfied through his parenting class. He further argued that Ernest’s parenting was appropriate given the number and ages of his children. Ernest’s attorney also argued there was a substantial probability that the children could be returned to Ernest’s custody within six months given Ernest’s efforts and that it would be in their best interests to do so.

Minors’ counsel submitted on the department’s recommendations. She stated she did not know if it was in the children’s best interest to continue services. County counsel argued that Ernest and the mother had simply not made substantial efforts or progress in their court-ordered plans.

In ruling, the juvenile court found that the children were members of a sibling group and that there was clear and convincing evidence that Ernest and the mother failed to participate regularly and make substantive progress in their court-ordered treatment plan. The juvenile court stated:

“[W]hile there has been some progress and while [the parents] have done some counseling, what I do not see is the kind of effort to complete the program which one would expect to see if they really wanted to reunify with these children. ¶ Neither of them [is working].... They had one or two hours a week here or there in counseling, plus some visits ... and that’s certainly not a busy enough schedule in the absence of a full-time job to explain their failure to participate in the other programs which were out

there. It seems like their responses were more like I'll do it when I get around to it."

The juvenile court also found there was not a substantial probability that the children would be returned to Ernest and the mother's custody within six months. Consequently, the juvenile court terminated reunification services and set a section 366.26 hearing. This petition ensued.²

DISCUSSION

I. Termination of Reunification Services at the Six-Month Review Hearing

When children are removed from parental custody, the age of the child at removal generally dictates the duration of reunification services. As a general rule, parents are granted 12 months of services if the child is three years of age or older and six months of services if the child is under the age of three. (§ 361.5, subd. (a)(1)(A)-(B).) However, when siblings are removed at the same time and at least one of the siblings is under the age of three, dependency law recognizes the children as a "sibling group" and grants the juvenile court discretion to limit services to six months for all the siblings if the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered reunification plan. (§ 366.21, subd. (e).) The purpose behind this provision is to expedite permanency for the younger sibling and give the court flexibility to maintain the sibling group in a permanent home. (*Abraham L. v. Superior Court* (2003) 112 Cal.App.4th 9, 13-14.)

If, however, the juvenile court finds there is a substantial probability that the child who was under the age of three on the date of the initial removal or is a member of a sibling group may be returned to parental custody within six months, the court may continue the case to the 12-month review hearing. (§ 366.21, subd. (e).)

² The mother did not file a writ petition.

In determining whether to terminate reunification services and set a section 366.26 hearing for some or all of the members of a sibling group, section 366.21, subdivision (e) requires that the juvenile court review and consider the social worker's report and recommendations. The statute further requires that the report address, at a minimum, "the closeness and strength of the sibling bond, the ages of the siblings, the appropriateness of maintaining the sibling group together, the detriment to the child if sibling ties are not maintained, the likelihood of finding a permanent home for the sibling group, whether the sibling group is currently placed together in a preadoptive home or has a concurrent plan goal of legal permanency in the same home, the wishes of each child whose age and physical and emotional condition permits a meaningful response, and the best interest of each child in the sibling group." (§ 366.21, subd. (e).)

A. *The Social Worker's Report*

Ernest contends that the social worker's report did not address the factors required by subdivision (e) of section 366.21. Consequently, he further contends the juvenile court terminated reunification services without the necessary information. We conclude Ernest waived his right to challenge the adequacy of the social worker's report.

““An appellate court will ordinarily not consider procedural defects or erroneous rulings, in connection with relief sought or defenses asserted, where an objection could have been but was not presented to the [trial] court by some appropriate method The circumstances may involve such intentional acts or acquiescence as to be appropriately classified under the headings of estoppel or waiver Often, however, the explanation is simply that it is unfair to the trial judge and to the adverse party to take advantage of an error on appeal when it could easily have been corrected at the trial.” [Citation.]’ [Citations.]” (*In re Dakota S.* (2000) 85 Cal.App.4th 494, 501.)

Here, the social worker's report was admitted into evidence at the six-month review hearing and Ernest's trial counsel did not object. Consequently, Ernest waived his

right to claim on appeal that the juvenile court erred in terminating reunification services because the social worker's report did not address the required factors.

B. Substantial Probability of Return

Ernest contends that he regularly participated and made substantive progress in his reunification plan and that there was a substantial probability the children could be returned to his custody by the 12-month review hearing. Therefore, he argues, the juvenile court erred in terminating his services. We disagree.

In order to find a substantial probability of return at the six-month review hearing, the juvenile court must find all three of the following: “(A) [T]he parent ... consistently and regularly contacted and visited with the child. [¶] (B) [T]he parent ... made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent ... demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1)(A)-(C).)

The juvenile court's decision whether to extend services to the time of the 12-month hearing is reviewed under an abuse of discretion standard. The juvenile court's exercise of discretion will not be disturbed in the absence of an arbitrary, capricious, or patently absurd determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

In this case, the juvenile court found that Ernest did not make sufficient progress to warrant continuing reunification services and we find no abuse of discretion in its decision. During the reunification period, the juvenile court must balance parallel interests; those of a parent to raise his or her child and the child's interest in safety and stability. Throughout, expediency is important, especially when, as here, very young children are involved. The instant juvenile court recognized that Ernest made some progress and acknowledged there were obstacles at play. However, it did not find the obstacles insurmountable or Ernest's efforts to engage in services diligent. There were

other considerations as well. Ernest had yet to enroll in domestic violence counseling which, given his criminal history, was critical. Further, he and the mother remained an intact couple and she had not enrolled in sexual abuse counseling. Given Ernest and the mother's lack of progress in these critical areas, and the children's struggle with aberrant violent and sexual behaviors, Ernest's lack of progress becomes more compelling. We find no error.

DISPOSITION

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