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

ASHLEY P.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF
HUMAN SERVICES,

Real Party in Interest.

F064095

(Super. Ct. No. JD125710-00)

OPINION

THE COURT*

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

Ashley P., in pro. per., for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Jennifer E. Feige, Deputy County Counsel, for Real Party in Interest.

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

Ashley, in propria persona, 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 her daughter T. She contends the juvenile court erred in finding she did not regularly participate and make progress in her reunification plan. (§ 366.21, subd. (e).) We will deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In January 2011, the juvenile court ordered then two-year-old T. detained from her parents, Ashley and Dwight, after sustaining allegations that their domestic violence and Ashley's substance abuse placed T. at risk of harm. The petition also alleged that T. was diagnosed with tuberous sclerosis,² a seizure disorder, and that Ashley and Dwight were developmentally disabled and unable to medically manage her condition. The juvenile court ordered the Kern County Department of Human Services (department) to provide Ashley and Dwight reunification services as soon as possible. The department placed T. in foster care.

In January 2011, following the detention hearing, the department offered Ashley and Dwight an initial reunification plan consisting of substance abuse counseling, parenting instruction and random drug testing. A social worker reviewed the case plan with them and they were provided a copy.

In March 2011, the juvenile court adjudged T. a dependent child following a contested jurisdictional hearing and ordered Ashley and Dwight to undergo psychological evaluations to determine if they could participate in and benefit from reunification

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

² Tuberous sclerosis is a genetic disorder characterized by the growth of benign tumors in many parts of the body, including the brain.

services. The juvenile court set the dispositional hearing, which was conducted in July 2011.

Meanwhile, Dr. Little, a clinical psychologist, evaluated Ashley and Dwight and opined that their adaptive skills were consistent with those of a developmentally delayed person and that they suffered from mental disorders. Dr. Little did not, however, preclude the possibility that they could successfully reunify.

In July 2011, at the dispositional hearing, the juvenile court found that Ashley and Dwight made no progress in their initial services based on the department's report that they had not enrolled in any of the services offered. The juvenile court ordered them to participate in counseling for anger management, child neglect, domestic violence, parenting, substance abuse and mental health and to submit to random drug testing.

Over the ensuing six months, Ashley and Dwight made what the department characterized as minimal progress in their court-ordered services. Ashley completed anger management and child neglect counseling and parenting instruction and was participating in domestic violence counseling. She was not, however, participating in substance abuse, mental health or couples counseling. In addition, she failed to drug test 11 times, tested positive for marijuana once, and missed four visits. The department recommended that the juvenile court terminate Ashley and Dwight's reunification services at the six-month review hearing and set a section 366.26 hearing.

In January 2012, the juvenile court conducted the six-month review hearing. Counsel presented argument only. Ashley's attorney asked the juvenile court to continue reunification services and to vacate its order for couples counseling because she and Dwight were no longer a couple.

Following argument, the juvenile court terminated Ashley and Dwight's reunification services and set a section 366.26 hearing. In issuing its ruling, the juvenile court stated, "Based on the evidence ..., I can't find that [the parents have] made

substantive progress. It would be just ignoring what's in the report.” This petition ensued.³

DISCUSSION

Ashley contends that the juvenile court should have given her more time to complete her reunification plan. She asks this court to vacate the juvenile court's order setting the section 366.26 hearing and order the juvenile court to continue reunification services. We decline to do so.

The juvenile court in this case terminated Ashley's reunification services pursuant to section 366.21, subdivision (e) because it found that she did not make substantive progress in her court-ordered services. Section 366.21, subdivision (e) provides in pertinent 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 plan, the court may schedule a hearing pursuant to Section 366.26”

Ashley argues the juvenile court erred because she regularly participated in and made substantive progress in her reunification plan. To that end, she points to evidence that she completed three of the seven classes she was ordered to complete (parenting, child neglect and anger management) and was actively participating in two others (domestic violence and mental health counseling). In addition, she claims she should not have had to participate in couples counseling since she and Dwight were no longer a couple. She acknowledges that she did not participate in substance abuse counseling or regularly drug test, but claims that she did not have time to participate because of all the other counseling she was required to complete. She also claims that she was not using drugs and that she was experiencing difficulty with the call-in system.

³ Dwight did not file a writ petition.

In essence, Ashley argues that the juvenile court should have reached a different conclusion with respect to her participation and progress based on the evidence to which she cites. The question on appeal, however, is not whether the juvenile court should have made a contrary finding, but whether substantial evidence supports the finding that it made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) “Substantial evidence is evidence that is ‘reasonable, credible, and of solid value’; such that a reasonable trier of fact could make such findings.” (*In re Sheila B.* (1993) 19 Cal.App.4th 187, 199.) On review of the evidence, as summarized above, we conclude substantial evidence supports the juvenile court’s finding.

T. was removed from Ashley’s custody for a variety of reasons, chief among which was Ashley’s inability to properly monitor T.’s seizure disorder. Of particular concern was Ashley’s failure to take T. to her medical appointments and properly administer her medication. Consequently, Ashley’s willingness to cooperate and comply with a services plan was critical to her ability to progress toward reunification. Yet, between January and July of 2011, she made no effort to participate in services offered her by the department. By January 2012, a full year after T. was initially detained, Ashley had still not progressed to the point where T. could be safely returned to her custody or where reunification was even a foreseeable option.

Given Ashley’s substantial delay in actively engaging in her reunification services, we concur that she failed to regularly participate in them. We also concur that her progress was not substantive, undoubtedly the more important consideration in this case. Substantive progress implies *real* progress and real progress implies progress that can be sustained. If the purpose of the reunification plan is family preservation, then the juvenile court must be able to find that the parent attempting reunification resolved the problem necessitating the child’s removal and that the parent can provide for the child’s

safety and well-being. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1343-1345.) The juvenile court stated it could not find such evidence and we concur.

We find no error in the juvenile court's finding that Ashley failed to regularly participate and make substantive progress in her court-ordered services and in its orders terminating her 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.