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

S.R.,

Petitioner,

v.

THE SUPERIOR COURT OF KERN  
COUNTY,

Respondent;

KERN COUNTY DEPARTMENT OF  
HUMAN SERVICES,

Real Party in Interest.

F064186

(Super. Ct. Nos. JD124487-00,  
JD100491-01 & JD101199-01)

**OPINION**

**THE COURT\***

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

S.R., in pro. per., for Petitioner.

No appearance for Respondent.

Theresa A. Goldner, County Counsel, and Paul E. Blackhurst, Deputy County Counsel, for Real Party in Interest.

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

Petitioner (mother) in propria persona seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 18-month review hearing terminating reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing as to her three children. We will deny the petition.

### **FACTUAL AND PROCEDURAL SUMMARY**

The subjects of this writ petition are petitioner's nine-year-old son, J.R.,<sup>2</sup> and eight- and five-year-old daughters, A.J.O. and A.O. respectively, who were taken into protective custody in June 2010 by the Kern County Department of Human Services (department) after petitioner was arrested for being under the influence of phencyclidine (PCP), endangering her children, battering a police officer and resisting arrest.

This was not the first time that petitioner's drug use required the removal of her children. In May 2003, the department took then one-year-old J.R. into protective custody after petitioner was arrested for possession of PCP for sale. In July 2003, the juvenile court exercised its dependency jurisdiction over J.R. and ordered petitioner to complete substance abuse counseling. That same month, petitioner gave birth to A.J.O. who was also removed from her custody. In 2004, J.R. and A.J.O. were returned to petitioner's custody under family maintenance and the juvenile court terminated its dependency jurisdiction. In 2007, petitioner gave birth to A.O.

After petitioner's arrest in June 2010, she was incarcerated for three months and released on probation. Meanwhile, in August, the juvenile court ordered her to

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

<sup>2</sup> In order to protect the privacy of petitioner and her children, we refer to them by their initials because their names are unique. (Cal. Rules of Court, rule 8.401(a)(2).)

participate in counseling for parenting, child neglect and substance abuse and to submit to random drug testing. The children were placed together in foster care.

In October 2010, petitioner enrolled in outpatient substance abuse counseling which she was scheduled to complete in March 2011. However, she missed classes and, in February 2011, she tested positive for methamphetamine twice. Just days before her first positive result, the juvenile court continued her services at the six-month review hearing.

In March 2011, petitioner's stepson died and her drug use escalated. She admitted her relapse to her probation officer who offered to help her get back into treatment. Instead, she chose incarceration, believing she was not strong enough to abstain through treatment only. She was in custody from the end of March to the end of June 2011. While in custody, she completed 72 hours of substance abuse education. In June 2011, petitioner was released on probation into a one-year residential drug treatment program.

In August 2011, the department filed its report for the 12-month review hearing, recommending that the juvenile court terminate petitioner's reunification services. The department cited petitioner's positive drug tests in February 2011, as well as her failure to drug test on five occasions.

Petitioner challenged the department's recommendation and testified at the contested 12-month review hearing in August 2011 that she was taking her recovery much more seriously and had the willpower to successfully complete her program and maintain her sobriety. At the time, neither the juvenile court nor the department knew that petitioner had used methamphetamine just three weeks before. Petitioner's attorney argued that petitioner's participation and progress in her services warranted continuing them to the 18-month review hearing. Minors' counsel concurred. The juvenile court continued reunification services to the 18-month review hearing, but warned petitioner that it was her last opportunity to demonstrate her commitment. The court stated, "I

don't expect to see any presumed or even actual positive tests, because that will be the end of the road.”

Petitioner subsequently tested negative for drugs, except for one missed test in December 2011, which the social worker believed was an honest mistake. However, her positive drug test required her to remain in drug treatment for another six to eight months.

By the 18-month review hearing in January 2012, petitioner had completed outpatient substance abuse treatment and was visiting the children unsupervised. However, she had to remain in residential treatment until approximately July 2012 and the children were not allowed to live with her at the facility.

The department recommended that the juvenile court terminate petitioner's reunification services at the 18-month review hearing and set a section 366.26 hearing to select a permanent plan. The children's foster parents were not asking to adopt the children, but an aunt and uncle were willing to be the children's legal guardians to give petitioner a chance to regain custody of them.

In January 2012, at the 18-month review hearing, petitioner's attorney asked the court to extend reunification services, arguing extraordinary circumstances warranted it; namely, petitioner's significant and consistent progress, the children's inability to live with her at the sober living home, the children's strong relationship to her and the prospect that they would remain in foster care.

The juvenile court disagreed. It terminated petitioner's reunification services and set a section 366.26 hearing. This petition ensued.

## **DISCUSSION**

Petitioner contends the juvenile court's order terminating her reunification services was error under section 366.22, subdivision (b). We disagree.

Section 366.22, subdivision (b) allows the juvenile court to continue reunification services up to a maximum of 24 months from the date the child was originally taken from

the parent's physical custody.<sup>3</sup> However, in order to do so, the juvenile court must determine that the provision of additional services would serve the child's best interests and that there is a substantial probability the child could be safely returned to the parent's custody within the extended period of time. (§ 366.22, subd. (b).)

In order to find a substantial probability that the child will be returned to the parent's physical custody within the extended period of time, the juvenile court must find all of the following:

“(1) That the parent ... consistently and regularly contacted and visited with the child.

“(2) That the parent ... made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.

“(3) [That] the parent ... demonstrated the capacity and ability both to complete the objectives of his or her substance abuse treatment plan ... and to provide for the child's safety, protection, physical and emotional well-being, and special needs.” (§ 366.22, subd. (b)(1)-(3).)

As a reviewing court, we must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) In light of the evidence, as summarized above, we conclude substantial

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<sup>3</sup> Section 366.22, subdivision (b) provides in part:

“If the child is not returned to a parent ... at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is making significant and consistent progress in a court-ordered residential substance abuse treatment program, ... the court may continue the case for up to six months for a subsequent permanency review hearing, provided that the hearing shall occur within 24 months of the date the child was originally taken from the physical custody of his or her parent ....”

evidence supports the juvenile court's order terminating petitioner's reunification services.

In this case, the juvenile court had to find that there was a substantial probability that petitioner's children could be returned to her custody within five months in order to continue reunification services. In order to find a substantial probability of return, the juvenile court had to find that petitioner "made significant and consistent progress in the prior 18 months in resolving problems that led to the [children's] removal from the home." (§ 366.22, subd. (b)(2).) However, the juvenile court did not make that finding. Rather, it found that petitioner made only moderate progress and the evidence bears that out. Over the course of petitioner's 18 months of reunification, she continued to use drugs while participating in substance abuse services. According to the appellate record, she used methamphetamine in February 2011 and was in full relapse by March 2011. She used methamphetamine again in August 2011 on the eve of the 12-month review hearing and then hid her drug use from the department and misrepresented her progress to the juvenile court. Such evidence supports the juvenile court's finding that petitioner's progress in abstaining from drug use was less than "significant and consistent" and that there was not a substantial probability the children could be safely returned to her custody within another five months.

In sum, we conclude substantial evidence supports the juvenile court's order terminating petitioner's reunification services given her failure to make significant and consistent progress in abstaining from drug use. We thus find no error and will deny the petition.

### **DISPOSITION**

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