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

JESSICA M.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F064813

(Super. Ct. No. 515928)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Ann Q.
Ameral, Judge.

Dependency Associates of Stanislaus, and Nadine Salim, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Robin McIver, Deputy County Counsel, for
Real Party in Interest.

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

Jessica M. 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 (Welf. & Inst. Code, § 366.22)¹ terminating reunification services and setting a section 366.26 hearing as to her daughter Alyssa. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Alyssa first came to the attention of the Stanislaus County Community Services Agency (agency) at birth. In July 2010, the agency was notified that then 19-year-old Jessica delivered a baby girl and tested positive for methamphetamine. Jessica had not had prenatal care until her third trimester, had no supplies for Alyssa, and was homeless. She identified Eric V. as Alyssa's father and said he was incarcerated in state prison on a probation violation. Eric has an extensive criminal history involving drugs and violence. Jessica said she was facing drug charges in Yolo County and was required to attend Narcotics Anonymous meetings and drug test but had not done so. The agency offered her voluntary family maintenance services and she agreed to participate.

In August 2010, Eric was released from prison. He tested positive for methamphetamine the day after his release. He, Jessica and Alyssa moved in with one of his relatives. In October, Eric put his female cousin in a choke hold and threatened to kill her. He and Jessica left with Alyssa. During this time, Jessica was not participating in her services and refused to drug test. The agency took then three-month-old Alyssa into protective custody.

In October 2010, the juvenile court ordered Alyssa detained pursuant to a dependency petition filed by the agency. (§ 300, subd. (b).) The court also ordered paternity testing for Eric.

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

In November 2010, Jessica entered an inpatient drug treatment program, however the agency was concerned that she planned to live with her grandmother after she completed the program. The concern arose from the fact that Jessica's grandmother has a long history of methamphetamine use. That same month, Alyssa was placed in the home of Mary K.

In December 2010, the juvenile court found that Eric was not Alyssa's biological father based on the paternity test results and ordered Jessica to complete a parenting program and substance abuse assessment, and submit to random drug testing. The court set interim and six-month review hearings for March and June 2011 respectively.

In the meantime, Jessica provided the name of another man, Jeremy P., who she said could be Alyssa's father. The agency located Jeremy incarcerated in county jail on charges of battery and misdemeanor unlawful intercourse.

In its report for the interim review hearing, the agency reported that Jessica was participating in substance abuse treatment and parenting instruction, but was living with her grandmother against the agency's advice. The agency also reported that Jessica appeared to be immature and very dependent, as she frequently asked the agency to arrange shuttle services or a driver so she could get to her visits because she did not like to ride the bus. She missed visitation from mid-November 2010 to January 2011 because she did not want to ride the bus and relied on unreliable relatives to get her there. The agency was concerned that Alyssa was not bonded to Jessica and planned to coordinate longer visits for her.

In March 2011, Jeremy appeared at the interim review hearing and the juvenile court ordered paternity testing. Paternity testing excluded Jeremy as Alyssa's father.

In April 2011, Jessica identified Jimmy G. as a possible father for Alyssa. At the time, Jimmy was in prison. Jimmy has an extensive criminal history dating back to 2001, including offenses involving cruelty to a child, battery, theft and drug use. During that

time, Jimmy was committed several times to determine his mental competence. Paternity testing failed to exclude him as Alyssa's biological father.

In its report for the six-month review hearing, the agency recommended that the juvenile court continue Jessica's reunification services to the 12-month review hearing, add a requirement that she participate in counseling to address her dependence on others and grant the agency discretion to arrange overnight visitation. The agency reported that Jessica was progressing with drug treatment but struggling with parenting and there was concern that she and Alyssa did not have a strong bond. In addition, Jessica appeared overly dependent on others such as her grandmother, Alyssa's foster parent and the agency to care for Alyssa and take care of her responsibilities.

In June 2011, the juvenile court conducted the six-month review hearing, approved the amended reunification plan and continued Jessica's services to the 12-month review hearing. By the time of the hearing, Jessica had moved to Redwoods Family Center (Redwoods), a clean and sober facility where she could have overnight visitation with Alyssa. The juvenile court set the 12-month review hearing for December 2011.

In its report for the 12-month review hearing, the agency recommended that the juvenile court continue Jessica's reunification services. The agency reported that Jessica was maintaining sobriety but was neglecting Alyssa's basic needs. For example, during her first three-day visit with Alyssa, Jessica did not feed her any food despite having been told that Alyssa could eat meals. In addition, Jessica's parenting instructor had to encourage her to bond with Alyssa and during her visits with Alyssa, Jessica took Alyssa with her to meet a man she was having a relationship with in violation of the program rules. Jessica admitted being in a relationship with a man who had been paroled from prison two months before and said she would discontinue the relationship. The agency recommended that the juvenile court include domestic violence counseling in Jessica's

reunification plan given her propensity for unhealthy relationships that placed her and Alyssa at risk.

The 12-month review hearing originally set for December 2011 was continued and conducted in January 2012. The juvenile court found that Jimmy was Alyssa's biological father and ordered him visitation. The court also amended Jessica's reunification plan as recommended and continued her services to the 18-month review hearing which it set for April 2012.

In its report for the 18-month review hearing, the agency recommended that the juvenile court terminate Jessica's reunification services and set a section 366.26 hearing. The agency reported that Jessica had not demonstrated any protective capacity with regard to Alyssa's safety, a concern for her physical and emotional well-being or a desire to parent her on her own. As supporting evidence, the agency cited Jessica's plan to live with her grandmother and father, both drug addicts in recovery, and her desire that Alyssa have a relationship with Jimmy even though he was a stranger to her and had a violent history. The agency also cited two incidents that raised concern about Jessica's ability to protect Alyssa. During a visit in March 2012, Alyssa inserted her fingers in a shredder, activating the cutting mechanism. She was not harmed. On another occasion, Jessica was watching another mother's children when one of the children wandered into the street. The agency also reported social worker Christine Shahbazian's statement that she had never observed Jessica show Alyssa any affection such as kissing, hugging or cradling her or speaking to her in a loving and affectionate tone.

Jessica challenged the agency's recommendation and the juvenile court conducted a contested 18-month review hearing in April and May 2012. Ms. Shahbazian testified, reiterating much of what was in the agency's report. Her primary concern was that after more than 18 months of reunification services she did not believe that Jessica was capable of providing Alyssa basic care such as feeding, supervision and medical care

oversight. In addition, Ms. Shahbazian testified that she kept looking for evidence that Jessica was bonded to and nurturing Alyssa, but never saw any sign of it despite increased home visits, overnight visitation and counseling. She did not believe that continuing reunification efforts would resolve the concerns she had.

Jessica asked the juvenile court to return Alyssa to her custody. She testified that she had been drug-free for a year and five months, was attending after-care and counseling and had Alyssa on overnight visits for four or five months. She said she did not have an ongoing relationship with Jimmy and was unaware of the extent of his criminal history. She wanted him to have visits with Alyssa but wanted them to be supervised. On cross-examination, Jessica testified that she was aware of Jimmy's violent past at the 12-month review hearing and always knew of his drug use but still wanted him to have a chance to know Alyssa.

Jessica further testified, providing details about the shredder incident. She said she was using a copier that was directly above a shredder and that Alyssa was near the shredder. Jessica knew that the shredder was there but did not think to move Alyssa away from it. She said she was watching Alyssa but while she was making copies, Alyssa placed her fingers into the paper entry of the shredder. Prior to that Alyssa was playing with electrical cords but Jessica had not noticed.

The juvenile court questioned Jessica about the incident when she was watching another client's children at Redwoods. She explained that she and Alyssa were in the kitchen and she was feeding Alyssa in the high chair when another mother asked her to watch her three children ranging in age from two to seven years who were playing outside in a gated area. Jessica said she was hesitant but the mother insisted and she thought she could feed Alyssa and watch the children at the same time. She said the two-year-old got out through the gate and was heading toward the street. Jessica left Alyssa in the high chair and chased the child across the street as a bus driver was driving by.

Jessica admitted that telling the other mother she would watch her children was not the right thing to do.

Mary K., Alyssa's de facto parent, testified that Jessica's inattentiveness and lack of vigilance concerned her. She said she would like to adopt Alyssa.

At the conclusion of the hearing, the juvenile court found that returning Alyssa to Jessica's care would place Alyssa at a substantial risk of detriment. The court also found that Jessica was provided reasonable services but made limited progress, ordered them terminated and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Jessica contends there is insufficient evidence to support the juvenile court's finding that returning Alyssa to her care would be detrimental to Alyssa's physical or emotional well-being. We disagree.

At each review hearing, including the 18-month review hearing, there is a statutory presumption that the child will be returned to parental custody unless the juvenile court finds, by a preponderance of the evidence, that the return of the child would create a substantial risk of detriment to the child's safety, protection or well-being. (§§ 366.21, subds. (e) & (f); 366.22, subd. (a).) The agency bears the burden of establishing detriment. (§§ 366.21, subds. (e) & (f); 366.22, subd. (a).) In assessing the risk of detriment, the court considers the extent to which the parent participated and made progress in the court-ordered treatment plan. (§§ 366.21, subds. (e) & (f); 366.22, subd. (a).) However, ultimately, the court's decision hinges on whether the child would be safe in parental custody. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141-1142.) If the juvenile court does not return the child to parental custody, it must set a section 366.26 hearing unless it finds that the parent was not provided reasonable services. (§ 366.22, subd. (a).)

On a challenge to the sufficiency of the evidence to support the juvenile court's finding, the question is not whether a contrary finding might have been made, but whether substantial evidence supports the finding made by the court. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) On the facts of this record, we conclude that it does.

The detriment in this case arises from Jessica's failure to exercise responsible parenting. This was first evident when Jessica used methamphetamine while pregnant with Alyssa and then refused to comply with services offered by the agency. That, plus her association with Eric, necessitated Alyssa's removal. Nineteen months later, Jessica was in sustained recovery, however, her irresponsibility manifested in other ways. Most notably, Jessica's inattention allowed Alyssa to get close enough to the shredder to insert her fingers and the two-year-old child to wander into the street. Fortunately, neither child was harmed; however, Jessica placed them at risk. In addition, Jessica planned to live with her grandmother and father despite the fact that doing so would place her sobriety and Alyssa's safety at risk.

Petitioner contends the agency did not meet its burden of establishing detrimental return merely by casting her as a "poor" parent. She likens her case to *Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495 (*Rita L.*) in which the appellate court found error in the juvenile court's finding that the minor could not be returned home (*Id.* at p. 504), arguing her case warrants the same result. We disagree, as *Rita L.* is easily distinguishable. In *Rita L.*, the juvenile court was prepared to return the child to the mother's custody when the mother tested positive for drugs after her adult daughter gave her a Tylenol tablet for her headache, without telling her it was actually a prescription tablet of Tylenol with codeine. (*Id.* at pp. 501, 505.) The appellate court held that the one positive drug test under the circumstances was insufficient evidence of risk of detriment to justify the juvenile court's conclusion that the child could not be returned to the mother's custody. (*Id.* at p. 506.)

In this case, unlike in *Rita L.*, there was not a single isolated incident that was somehow inconsistent with Jessica's overall efforts to reunify with Alyssa. Instead, Jessica presented a pattern of behavior that threatened Alyssa's safety if she were placed in Jessica's custody. To the extent that Jessica argues the agency could have ameliorated that by providing her additional overnight visitation, she fails to show how more visitation would have made her more responsible or that the agency's failure to do so was unreasonable under the circumstances. Thus, we find no error in the juvenile court's decision not to return Alyssa to Jessica's custody. Nor do we find error, to the extent that Jessica raises it, in the juvenile court's finding that she was provided reasonable services. Consequently, we affirm its orders terminating reunification services and setting a section 366.26 hearing and deny the petition.

DISPOSITION

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