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

L.H.,

Petitioner,

v.

THE SUPERIOR COURT OF STANISLAUS
COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F065364

(Super. Ct. No. 515768)

OPINION

THE COURT*

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

Alistair Sheaffer, for Petitioner.

No appearance for Respondent.

John P. Doering, County Counsel, and Carrie Stephens, Deputy County Counsel,
for Real Party in Interest.

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* Before Poochigian, Acting P.J., Detjen, J. and Franson, J.

L.H. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 24-month review hearing (Welf. & Inst. Code, § 366.25)¹ terminating reunification services and setting a section 366.26 hearing as to her three-year-old son, M. Mother contends the juvenile court erred in finding that it would be detrimental to return M. to her custody. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In June 2010, sheriff's deputies served a search warrant at the home of mother's mother, Theresa, where mother lived with then 14-month-old M. The home had been under surveillance for gang activity and there was an arrest warrant for mother. The deputies seized a variety of items, including a picture of mother using gang hand signs, notepads with gang writing, small plastic baggies with marijuana leaves imprinted on them, a red notebook with pay/owe writing, and stolen items. The deputies arrested mother and the Stanislaus County Community Services Agency (agency) took M. into protective custody.

Theresa told the deputies that mother was affiliated with the West Side Boyz, which she said was a Norteño gang. Theresa said she was concerned about mother living in her house because she heard rumors that M.'s father snitched on some gang members and the Norteño gang wanted to retaliate by harming mother and M. Mother denied gang involvement and asserted that she was falsely accused.

The agency filed a dependency petition on M.'s behalf, alleging that sheriff's deputies executed a search warrant at mother's house, which was under surveillance for gang activity, and found adults smoking "dope" in the presence of children, including M. The petition further alleged that an emergency response social worker interviewed mother the day of the search and observed that mother had two black eyes and that her eyes were red from broken blood vessels. The social worker also observed a drug pipe

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

and two water pipes used for smoking drugs and noted that the room was decorated all in black and red representing the Norteño gang. The petition also alleged that mother and M.'s father were incarcerated and could not provide for M.'s support. The agency placed M. in a foster home.

The juvenile court exercised its dependency jurisdiction and ordered a plan of reunification for mother comprised of individual counseling to address her gang involvement, a parenting program, substance abuse treatment if indicated and random drug testing. The court also appointed a court appointed special advocate (CASA).

Over the next six months, mother remained incarcerated, awaiting trial on charges of residential burglary and robbery. The district attorney advised the agency that mother would be incarcerated for the foreseeable future given the potential sentence she faced if convicted. Also during this time, the agency became aware that M. was developmentally delayed, especially in communication, had behavioral problems, and that his foster parents wanted to adopt him. Under the circumstances, the agency recommended that the juvenile court terminate mother's reunification services at the six-month review hearing, which was scheduled for January 2011.

In May 2011, following multiple continuances, the juvenile court conducted a contested six-month review hearing at which it continued reunification services and ordered the agency to modify mother's services plan to include a domestic violence assessment and any recommended treatment. The juvenile court set the 12-month review hearing for July 2011.

In late June 2011, mother was released from prison on parole. The conditions of her parole required her to drug test and to address her gang involvement and refrain from wearing the color red. On the day of mother's release, a posting was made to her MySpace page stating: "FRESH OUTTA CHOWCHILLA ..."

The agency referred mother for the court-ordered reunification services and she participated in them. However, the agency recommended that the juvenile court

terminate reunification services at the 12-month review hearing given the uncertainty that M. could be reunited with mother by the 18-month review hearing.

In August 2011, the juvenile court conducted a contested 12-month review hearing, continued reunification services and set the 18-month review hearing for December 2011.

In November 2011, the agency informed the juvenile court that mother was participating in services and had improved her attitude and behavior. However, she continued to deny gang involvement or having had problems with substance abuse, even though she disclosed during one of her assessments that marijuana was her drug of choice and that she had been using it since she was six years old. According to the agency, it was characteristic of mother to deny behavior attributed to her even though it was directly observed by others.

In December 2011, the juvenile court continued mother's reunification services to the 24-month review hearing set for May 2012.

In January 2012, mother petitioned the juvenile court for overnight visits and a trial visit at Redwoods Clean and Sober Living Facility (Redwoods) where she lived. She attached a letter from her therapist, Maryanne Cose, who stated that mother accepted responsibility for her past behavior and associations and that mother reported developing new and healthier friendships. The agency opposed mother's petition, citing evidence that she continued to display defiant and aggressive behavior and to wear red clothing.

In March 2012, the juvenile court granted mother's petition for overnight visits and granted the agency discretion to arrange a trial visit. Mother's first overnight visit with M. occurred several days later. During one visit in March, the social worker observed that mother had dressed M. in only red, black and gray and that he had a 49ers cap on, which the social worker believed to be a Norteño gang symbol. She cautioned mother about going out in public with M. dressed in gang clothing and gave mother

copies of newspaper articles reporting incidents of children shot for wearing the wrong color in the wrong part of town.

On April 23, 2012, M. was diagnosed with autism. Three days later, the staff at Redwoods informed the social worker that mother was smoking spice (synthetic cannabinoid) in the bathroom with the shower running. The following day, mother was drug tested for spice, her room was searched, and rolling papers were found.

Mother initially denied smoking spice. She said she was stressed, started smoking, and used the papers to roll cigarettes. Several days later, she admitted using spice after she was told that she would be tested specifically for it. The social worker asked her why she did it knowing that the social worker intended to recommend returning M. to her custody barring any negative reports. Mother said she could not explain except that the drug was available and she was stressed. The social worker terminated mother's overnight visit. Several days later, mother stated that smoking spice was not a relapse, likening it to drinking too much coffee or energy drinks or smoking tobacco.

In May 2012, the agency filed an addendum report, which included an analysis of mother's MySpace page by a gang expert. The gang expert informed the agency that mother's page was "full of gang signs and symbols," and that she was "obviously still gang affiliated," as some of her writings were "consistent with active gang participation." For example, the expert stated that the use of the dollar sign in place of the letter "S" is a gesture of disrespect to the Sureños. The expert also opined that M. would be in danger if returned to mother's custody. The expert stated,

"The mother is obviously still affiliating with a gang. She even says that she has to keep her eyes open and be watchful of rival gang members. That tells me that she is aware of her active gang participation and the fact that rival gang members could target her because of it. Being that I have seen innocent bystanders shot by gang activity, it would not be a surprise to me if her child were to become another innocent victim of gang violence simply for being with his mother. Additionally, in my experience gang members often have guns and dangerous weapons. [Since] she is likely still associating with gang members I could only imagine that she would subject her son to dangerous weapons that may result in him being injured."

The agency recommended that the juvenile court terminate mother's reunification services at the 24-month review hearing given her failure to make lasting lifestyle changes, M.'s autism, and his consequent need for vigilant parenting.

The juvenile court convened the 24-month review hearing as a contested hearing in May 2012 and concluded it the following July. Mother testified and denied being a gang member but said she spent a lot of time with members of the Norteño gang. She also denied posting on her MySpace in June 2011, claiming that someone else did it pretending to be her. Mother also denied smoking spice at Redwoods. Instead she said she smoked it while waiting for a bus and after having been denied permission to attend a meeting. Mother admitted being in denial about her drug use prior to her relapse in April 2012, but said she disengaged from the lifestyle by moving into Redwoods and severing contact with gang members. She also testified that she was participating in substance abuse treatment and attending weekly support meetings.

Mother's program manager at Redwoods testified that mother made significant improvement in her behavior and her substance abuse counselor testified that she was doing well in her recovery. In addition, mother's therapist testified that mother was affectionate and engaging with M. and the shift leader at Redwoods testified that M. was strongly bonded to mother.

At the conclusion of the hearing, the juvenile court found that it would be detrimental to return M. to mother's custody, terminated her reunification services and set a section 366.26 hearing. In doing so, the juvenile court commented on mother's demeanor, which it described as "cocky" and "very concerning." The juvenile court also stated that it did not find mother's assertion that someone else posted to her MySpace page credible. The juvenile court stated, "I have children in this department who have actually been shot because of gang affiliation, young children, and that concerns me greatly. But what is really concerning to me is [mother's] denial regarding her drug addiction." This petition ensued.

DISCUSSION

Mother contends that there was insufficient evidence to support the juvenile court's finding that it would be detrimental to M. to return him to her custody. She asserts that her use of spice was an isolated event and that there was no evidence that she posted to her MySpace page after her release from custody.

At the 24-month permanency review hearing, the juvenile court must "order the return of the child to the physical custody of his or her parent ... unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent ... would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment." (§ 366.25, subd. (a)(1).)

On review, we determine whether there is substantial evidence on the record to support the juvenile court's finding that M. would be at substantial risk of detriment if returned to mother's custody. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) In so doing, we view the record favorably to the juvenile court's determination and draw all reasonable inferences in support of it. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) As the petitioner, mother has the burden of showing that there is no evidence of a sufficiently substantial nature to support the court's finding. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

In this case, M. was removed from mother's custody because she was caring for him while living the gang lifestyle of crime and drug use. Though the juvenile court could have limited mother's reunification to six months given M.'s age, it provided her a full twelve months of services after her release from custody and granted her overnight visits in March 2012. However, mother demonstrated that her lifestyle had not changed. The very day she was released from custody, she announced it on her MySpace page, which was, as the gang expert stated, "full of gang signs and symbols." In addition, the

same month she began overnight visitation with M., she dressed him in a cap and colors symbolizing the Norteño gang.

In her petition, mother focuses much of her argument on her “singular relapse,” arguing that it was insufficient to support a finding of detriment. Even assuming she is correct on that point, there would still be more than substantial evidence on this record to find that returning M. to mother’s custody would place him at great physical risk. We refer to the fact that mother was actively participating in a gang. This was apparent from the beginning when mother’s mother, Theresa, told the sheriff’s deputies that mother was affiliated with the West Side Boyz, a Norteño gang. Theresa said she was afraid to have mother in her home because she heard that a rival gang was going to harm mother and M. In addition, the record contains postings to mother’s MySpace page with pictures of her flashing a gang sign, in addition to the many gang signs and symbols described by the gang expert. Mother knew that her gang participation was a barrier to reunifying with M. and yet she made no real effort to disengage from it. On the contrary, she continued to post in gang style on her MySpace page. Though she testified that she did not enter those postings, the juvenile court did not believe her. Mother also demonstrated her willingness to intentionally place M. at risk by taking him out in public dressed in clothing reflective of gang affiliation.

In our view, the evidence of mother’s continuing gang affiliation and the attendant risk to herself and M. virtually compelled a finding that returning M. to her custody would create a substantial risk to M.’s safety. Thus, we find no error on this record.

DISPOSITION

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