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

CARRIE L.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F065773

(Super. Ct. No. 11CEJ300136)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian M. Arax, Judge.

Fresno Dependency Office and Samuel D. Kylo, for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel, for Real Party in Interest.

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* Before Levy, Acting P.J., Cornell, J., and Detjen, J.

Carrie L. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 12-month review hearing (Welf. & Inst. Code, § 366.22, subd. (a))¹ terminating her reunification services and setting a section 366.26 hearing as to her 12-year-old daughter M.S. and two-year-old son, T.S. Mother contends the juvenile court erred in finding that she was provided reasonable services and that there was not a substantial probability the children could be returned to her custody. She seeks an order from this court directing the juvenile court to vacate its section 366.26 hearing and to continue reunification services. We decline to do so and deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In June 2011, the Fresno County Department of Social Services (department) took then ten-year-old M.S. and eight-month-old T.S. into protective custody and filed a dependency petition alleging that mother and the children's father, Matthew S., placed the children at risk of harm because of their drug use and domestic violence.

In its report for the detention hearing, the department included mother's child welfare history, which dated back to 2004. In addition to multiple reports over the years of mother's drug use, there was also a report in 2007 that then seven-year-old M.S. was sexually molested. The department substantiated the report and the perpetrator was arrested.

In July 2011, the juvenile court ordered the children detained and ordered the department to refer M.S. for a mental health assessment and treatment if indicated. The juvenile court also ordered the department to offer mother and Matthew services.

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

In July 2011, mother completed a substance abuse assessment and was referred for intensive outpatient substance abuse treatment. Mother also completed a domestic violence assessment and was referred to a domestic violence victim's treatment program. In mid-July, mother entered drug treatment, but relapsed and was discharged approximately a week later. The department scheduled a meeting to help her re-enter treatment, but she did not attend. By August, the department had lost contact with mother and her whereabouts were unknown.

In August 2011, the children were placed with their paternal aunt. That same month, M.S. began seeing therapist Monica Reynoso weekly. M.S. expressed worry and fear about visiting her father and stated she did not want more frequent visitation. She also talked a lot about wanting to stay with her aunt and enjoying her school and friends.

In December 2011, the juvenile court conducted the dispositional hearing. Mother was in attendance. The juvenile court ordered the children removed from parental custody and ordered mother and Matthew to participate in parenting classes, substance abuse and domestic violence treatment, complete a mental health assessment and participate in recommended treatment, and submit to random drug testing. The juvenile court also ordered supervised visits and set the six-month review hearing for June 2012.

By June 2012, mother was participating in her services plan and the department anticipated that she would be able to resume custody of the children within another six months. The department reported that mother completed inpatient drug treatment and had tested negative for drugs since the preceding March. She completed a mental health assessment and was attending weekly therapy sessions and making progress. She was also addressing domestic violence with her therapist during their sessions. In addition, the department had advanced mother to unsupervised visitation, which M.S. enjoyed. She, however, expressed discomfort having mother's boyfriend present. The department told mother that her boyfriend could not attend visits. Mother said she understood and

would not include him again, but two weeks later she told M.S. that she was taking them to see "Shadow." She told M.S. not to tell anyone, however, because she could get into trouble because Shadow had not had a background check. When confronted, mother explained that Shadow was M.S.'s godfather and his mother wanted to see M.S. Mother agreed not to allow anyone who had not been screened to participate in visitation.

The department further reported that mother had obtained housing for herself, attended Alcoholics/Narcotics Anonymous meetings, and had a sponsor. In addition, M.S. stated that she wanted to remain with her brother and her aunt, but also wanted to be placed with mother if at all possible. However, she did not want to reunify with her father. She said that she loved him but was afraid of him.

In June 2012, at the six-month review hearing, the juvenile court continued reunification services to mother and Matthew and set the 12-month review hearing for August 2012.

The 12-month review hearing was conducted in September 2012. In the few short months between the review hearings, the prospects of mother successfully reunifying diminished. M.S. reported that her great-aunt said that mother was no longer living with her and she did not know where mother was. M.S. did not want to visit mother unsupervised as she did not trust mother to keep her and her brother safe. M.S. also told her therapist that she did not want to reunify with mother. She said she would try conjoint therapy with her mother and even an overnight visit, but was not comfortable with the idea. She cried when the subject of overnight visitation was raised and insisted on having several safety plans in place if it occurred.

During this same period, mother was exhibiting increasing frustration with M.S.'s resistance and responded inappropriately to her. For example, she told M.S. that M.S. was making it hard for her to remain sober. She told her that she (M.S.) was "F***ed up" because she (mother) was "F***ed up" and that M.S. would always be "F***ed up."

She also told M.S. that her (mother's) therapist thought M.S. was acting like a "B." Also, during this time, it was becoming increasingly apparent that T.S. was developmentally delayed and was possibly autistic. Finally, during this period, Matthew decided it was in the children's best interests if they were adopted by his sister and he ceased any further attempts to reunify.

In its report for the 12-month review hearing, the department recommended that the juvenile court terminate reunification services for mother and Matthew. Its reasoning as to mother was that, though she completed her court-ordered services and maintained her sobriety, she demonstrated she did not utilize the skills she learned as evidenced by her inappropriate communication with M.S. In addition, she did not have stable housing or a job and was struggling to provide the basic necessities such as food for T.S. during their two-day-a-week liberal visits. She had even resorted to panhandling at the zoo with T.S. for \$2 to drug test. Thus, the department opined it was detrimental to return the children to mother's custody and there was not a substantial probability the children could be returned to her after another period of reunification.

In September 2012, the juvenile court conducted a contested 12-month review hearing. Monica Reynoso testified that she diagnosed M.S. with anxiety disorder and that M.S.'s anxiety was related to returning to mother's care. She testified that M.S. was excelling socially and scholastically in her aunt's home and she was concerned that she would decompensate if she were placed in a situation that caused her anxiety. She said M.S.'s primary need was "some sort of finality for her to know what's going to happen in her future"

Ms. Reynoso further testified that she did not refer M.S. for family therapy because M.S. stated she was not ready for it. M.S. felt hopeless that any change would occur and did not believe it would make a difference. Ms. Reynoso also testified that family therapy needed to occur before M.S. could reunify with mother. However, Ms.

Reynoso said she would not be conducting family therapy if it occurred because she was concerned M.S. would view her participation as a betrayal.

Social worker Tiffany Murphy-Deaver testified that M.S. was asked if she wanted to participate in therapy with mother and her therapist and M.S. said she was not comfortable doing that. She said they considered having a third party conduct the therapy, but did not pursue it because Ms. Reynoso did not believe it was therapeutically recommended to force M.S. into therapy with her mother.

At the conclusion of the hearing, the juvenile court acknowledged mother's progress, but that she was not "remotely" close to being able to safely parent the children. The juvenile court found that it would be detrimental to return the children to mother's custody, that she was provided reasonable services, but that her progress was moderate. The court further found there was not a substantial probability the children could be returned to mother, terminated her reunification services, and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Reasonableness of Services

Mother contends the juvenile court erred in finding she was provided reasonable services because the department unreasonably delayed in providing her family therapy at a time when she contends M.S. was willing to participate in it. As evidence of that, she cites Ms. Murphy-Deaver's response to a question posed by mother's attorney about a meeting on July 5, 2012 that M.S. attended. We quote that exchange:

“[Mother's attorney]: And you're talking [about] the staffing on July fifth?”

“[Ms. Murphy-Deaver]: Yes.

“[Mother's attorney]: She was uncomfortable with therapy but she would do it. That's what I read in your report?”

“[Ms. Murphy-Deaver]: Yes, she reluctantly said she would do it.”

Mother construes M.S.'s position at the July meeting as a willingness to participate in therapy of which the agency failed to take advantage. In our view, the record speaks for itself. M.S. was reluctant and uncomfortable participating in family therapy. Further, Ms. Reynoso advised against it for therapeutic reasons. Short of forcing M.S. into therapy against her therapist's advice, there was nothing the department could do to facilitate family therapy. Under those circumstances, the department was not unreasonable in temporarily suspending its efforts to promote family therapy.

Substantial Probability of Return

Mother contends the juvenile court did not sufficiently weigh her progress in assessing the probability the children could be returned to her custody with continued services. Thus, she argues the juvenile court erred in terminating her services. We disagree.

The juvenile court may extend services beyond 12 months if it finds there is a substantial probability that the child will be returned to parental custody and safely maintained in the home within the extended period of time, or if it finds that reasonable services have not been provided to the parent. (§§ 361.5, subd. (a); 366.21, subd. (g)(1).) We conclude that mother was provided reasonable services, so the question then is whether there was not a substantial probability the children could be returned to her if she was provided additional time to reunify.

In assessing whether there is a substantial probability of return, the juvenile court must consider the parent's capacity to meet the objectives of the case plan and provide a safe home for the child. (§ 366.21, subd. (g)(1)(C).)

When the juvenile court's order terminating reunification services is challenged on appeal, our role is to determine whether substantial evidence supports the juvenile court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.) In so doing, we do not reweigh the evidence or draw our own conclusions from it. (*In re Matthew S.*

(1988) 201 Cal.App.3d 315, 321.) Rather, we merely determine if there are sufficient facts to support the findings that the juvenile court made. (*Ibid.*) Stated another way, the question on appeal is not whether the juvenile court could have found differently, but whether substantial evidence supports the finding that the juvenile court made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) On this record, we conclude that it does.

The juvenile court acknowledged at length mother's progress and lauded her courage in overcoming significant obstacles. Nevertheless, the juvenile court concluded, in essence that M.S. and T.S. had special needs that mother could not yet meet. M.S. had been damaged by mother's neglectful parenting and M.S. needed to be able to trust the adults in her life and live in a stable environment. Despite that, mother continued to expose her to strange men and inappropriately took her frustrations out on her. T.S. had special developmental needs and mother struggled to even feed and diaper him. These are just some of the reasons that convinced the juvenile court that the children would not soon be safe to return to mother's custody. The juvenile court did not, as mother contends, disregard the significance of her accomplishments; it simply found that despite her accomplishments, she could not make the children safe.

DISPOSITION

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