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

L.S.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED
COUNTY,

Respondent;

MERCED COUNTY HUMAN SERVICES
AGENCY,

Real Party in Interest.

F066624

(Super. Ct. No. JP000455)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Brian L. McCabe, Judge.

William A. Davis, for Petitioner.

No appearance for Respondent.

James N. Fincher, County Counsel, and Sheri L. Damon, Deputy County Counsel, for Real Party in Interest.

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* Before Wiseman, Acting P.J., Detjen, J., and Peña, J.

L.S. seeks extraordinary writ review (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested 12-month review hearing (Welf. & Inst. Code, § 366.21, subd. (f))¹ terminating her reunification services and setting a section 366.26 hearing as to her five-year-old great-nephew, Ryan. She contends the juvenile court erred in ruling as it did because she substantially complied with her reunification plan. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In July 2010, in a prior dependency proceeding, then three-year-old Ryan was placed in guardianship with his great-grandmother. However, it was not long before she was too ill to care for him. Consequently, L.S., her daughter, was appointed Ryan's successor guardian in November 2010.

These dependency proceedings were initiated in September 2011 after a social worker from the Merced County Human Services Agency (agency) inspected L.S.'s home after receiving a report of general neglect. The house was cramped and the countertops, stove and rooms were covered with clutter. The cabinet doors below the kitchen sink were latched closed with a large knife. There was also a large knife on the stove. The bathroom door was latched shut and there were two potty chairs in the living room, one for a child and one for an adult. Inside the bathroom, there were cleaning supplies, bleach and chemicals on the floor and the shower and bathtub were filthy. L.S.'s bed was covered with clothes and other belongings and Ryan's bed was covered with food and toys. L.S. slept on a recliner in the living room and Ryan slept on a blanket in the hallway. There was no area to bathe or cook, the back door was boarded and all the rooms had high locks on them, posing a fire hazard.

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

L.S. admitted that her house was “atrocious” but said she needed help. She said her husband left her three years before and that her house had been in that condition even before he left. After he left, she had leg surgery and was unable to get around the house. She also developed lupus and fibromyalgia. She said she sat in her car to supervise Ryan while he played outside. She also said that she had never taken Ryan to the dentist and missed an ophthalmology appointment he had for his “drooping eye.” She said the doctor recommended surgery but she did not pursue that option, hoping that Ryan would outgrow the problem.

The social worker took Ryan into protective custody and filed a dependency petition on his behalf. The agency reported that Ryan was diagnosed with autism and needed structure and a higher level of support. It also reported that the whereabouts of Ryan’s mother and alleged father were unknown.

In October 2011, the juvenile court exercised its dependency jurisdiction and ordered L.S. to participate in a mental health assessment and a parenting education program. The juvenile court advised L.S. that if she failed to reunify with Ryan by the 12-month review hearing that it could terminate the guardianship. The court set the six-month review hearing for April 2012.

In April 2012, L.S.’s mother died and L.S. had not eliminated the safety hazards in her home. However, she completed a parenting program and a mental health assessment and did not need mental health services. In addition, L.S. enjoyed positive supervised visits with Ryan. She asked him questions about school, gave him positive encouragement and praise, and taught him how to assemble toys.

The agency recommended that the juvenile court continue services to the 12-month review hearing to give L.S. an opportunity to clean her home and work toward unsupervised visits and a trial visit. The agency also wanted L.S. to receive a mental health assessment by a licensed clinical social worker (LCSW) from the agency.

The six-month review hearing was continued and conducted in May 2012. The juvenile court continued L.S.'s reunification services to the 12-month review hearing which it set for November 2012. The court also approved a modified reunification plan that required L.S. to participate in a mental health assessment completed by an agency LCSW.

In June 2012, L.S. participated in a mental health assessment with Eric Kammersgard, LCSW. Kammersgard reported that L.S. was not a reliable reporter because she was vague and inconsistent in her responses. He also stated that she exhibited symptoms of a thought disorder and possibly a mood disorder. He recommended that she complete a psychological evaluation to evaluate her for hoarding as well as diagnostic clarification. He also recommended that she participate in grief counseling.

In October 2012, L.S. was evaluated by psychiatrist Dr. Manolito Castillo who concluded L.S.'s mood was normal but her affect anxious. He diagnosed her with anxiety disorder but did not recommend medication. He was unable to determine whether she suffered from hoarding.

In its report for the 12-month review hearing, the agency recommended that the juvenile court terminate L.S.'s reunification services and set a section 366.26 hearing because the condition of her home remained unchanged. The social worker attempted multiple times to evaluate L.S.'s home but L.S. kept putting her off, stating she needed more time. Finally, in late July 2012, L.S. let the social worker in her home but begged her not to take pictures. The social worker reported that the house, beginning with the front porch, was "full of things." She said the clutter did not reach the ceiling but was "definitely packed." L.S. had a variety of excuses why her home was still cluttered and the social worker believed she was hoarding. By November 2012, L.S. had still not allowed the social worker to take pictures.

L.S. contested the agency's recommendation and, at the contested 12-month review hearing in January 2013, called private investigator Clifford Hazeltine to testify about the improved condition of her home. He testified that he visited her home the day before the hearing and took 20 photos that were entered into evidence.

L.S. testified that her home had been in an improved condition for awhile and she was waiting for somebody to take pictures. She said the social worker visited her home in January 2013, approximately two weeks before the hearing, and she invited her in to see her house. However, she said the social worker made negative comments, left and then returned when she was sick. Because of that, L.S. testified, she did not want the social worker handling her case anymore and went to the agency office to have her fired. While there, she told someone that her house was fine and that she was waiting for someone to see it. She said she did not completely trust the agency, but would allow a social worker to verify the condition of her home if her lawyer approved it.

L.S. also testified that there were two rooms that she kept locked to prevent Ryan from accessing them. One was her daughter's bedroom and the other was a library that contained stacks of books. She denied that Ryan could be harmed in the library because he would never be able to get in there.

At the conclusion of the hearing, the juvenile court found that L.S. made minimal progress in her reunification plan and that it would be detrimental to return Ryan to her custody. The juvenile court terminated L.S.'s reunification services and set a section 366.26 hearing. In doing so, the juvenile court cited several concerns: L.S.'s reluctance to cooperate with the social worker, her unwillingness to recognize unsafe conditions in her home, and her unwillingness to accept responsibility for the condition of her home. This petition ensued.

DISCUSSION

L.S. contends that she completed her reunification plan and made her home safe for Ryan's return as evidenced by Hazeltine's testimony. Therefore, she further contends, the juvenile court erred in finding that it would be detrimental to return Ryan to her custody. She asks this court to issue a writ either ordering the juvenile court to return Ryan to her and dismiss dependency proceedings or continue reunification services. We decline to do either, finding no error in the juvenile court's rulings.

At the 12-month review hearing, the juvenile court must return the child to the physical custody of the guardian unless the court finds, by a preponderance of the evidence, that doing so would create a substantial risk of detriment to the child's safety, protection or physical and emotional well-being. The failure of the guardian to regularly participate and make substantive progress in the court-ordered reunification plan constitutes prima facie evidence of detriment. (§ 366.21, subd. (f).)

We review the juvenile court's finding that return of a child would create a substantial risk of detriment for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) In light of the facts as summarized above and for the reasons that follow, we conclude substantial evidence supports the juvenile court's detriment finding.

The detriment that required Ryan's initial removal was the cluttered, dangerous and filthy condition of L.S.'s home. Though L.S. ultimately improved her home's condition, she continued to pose a risk of detriment to Ryan. That is so because she did not progress to the point of recognizing conditions that endangered him and taking responsibility for them. Additionally, she did not trust the agency to provide the oversight she needed to make sure her home was safe. Consequently, there was a strong possibility that L.S. would allow her home to deteriorate to its original condition or worse and recreate the detriment that necessitated Ryan's removal. Thus, the evidence supports

the juvenile court's finding that returning Ryan to L.S. would place him at a substantial risk of detriment.

We find no error and deny the petition.

DISPOSITION

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