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

MELODY M.,

Petitioner,

v.

THE SUPERIOR COURT OF
STANISLAUS COUNTY,

Respondent;

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Real Party in Interest.

F066663

(Super. Ct. No. 516144)

OPINION

THE COURT*

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

Nadine Salim and Dependency Associates of Stanislaus, for Petitioner.

No appearance for Respondent.

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

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

Melody M. seeks extraordinary writ review (Cal. Rules of Court, rule 8.452) of the juvenile court's orders issued at an 18-month review hearing (Welf. & Inst. Code, § 366.22)¹ terminating her reunification services and setting a section 366.26 hearing to select a permanent plan for her three-year-old son, Christopher. Melody contends the juvenile court erred in finding it would be detrimental to return Christopher to her custody. Alternatively, she contends the Stanislaus County Community Services Agency (agency) did not provide her reasonable visitation. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Melody is a 28-year-old mother of two minor sons, Christopher, the subject of this writ petition, and Joshua. Melody has an intelligence quotient (IQ) that places her in the range of mildly mentally retarded.

Joshua, now seven, resides with his father. In 2009, Melody was arrested for not having a car seat for Joshua and for allowing her friends to smoke marijuana in the car while he was present. She was convicted of misdemeanor willful cruelty to a child and placed on two years of probation.

These dependency proceedings were initiated in July 2011 after the agency learned that then 15-month-old Christopher was living with Melody and her girlfriend in a motel room where adults were smoking marijuana and methamphetamine.

The agency took Christopher into protective custody and filed a dependency petition on his behalf alleging that Melody's drug use placed him at a substantial risk of serious physical harm and that Christopher's biological father, Charles E., was unable to take custody of Christopher.

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

In October 2011, the juvenile court exercised its dependency jurisdiction and ordered reunification services for Melody and Charles. Melody's case plan required her to participate in individual counseling and a parenting program at Sierra Vista Child and Family Services (Sierra Vista), submit to random drug testing and complete a drug and alcohol assessment and follow all recommendations. The juvenile court also ordered weekly two-hour visitation and set a six-month review hearing in April 2012.

In November 2011, Melody entered inpatient substance abuse treatment at Stanislaus Recovery Services and completed the program in January 2012. However, she refused to live in a clean and sober home, opting instead to live with her girlfriend. During this time, Melody was unable to initiate individual counseling and parenting at Sierra Vista because of her inpatient status. Charles got a late start in initiating his services but by March was in a drug treatment program.

In April 2012, at the six-month review hearing, the juvenile court continued reunification services for Melody and Charles and set the 12-month review hearing for September 2012. That same month, Melody moved into Redwood Family Center (Redwood), a clean and sober living facility.

By September 2012, Melody completed drug treatment, was in an aftercare program and had been clean and sober for 104 days. In addition, she was having daylong visits with Christopher and participating in individual counseling and parenting classes with Melissa Hale at Sierra Vista. However, Ms. Hale noticed that Melody was having difficulty retaining information. She suspected that Melody had a learning disorder and recommended that the agency refer her for a psychological evaluation. Charles, on the other hand, completed a parenting program but discontinued drug treatment so that he could work and support Christopher. When he had not returned to drug treatment by the 12-month review hearing, the agency recommended that the juvenile court terminate his reunification services.

In September 2012, the juvenile court set a contested 12-month review hearing for October 2012 and ordered Melody to complete a psychological evaluation. During the two-day contested hearing, the juvenile court received the psychological evaluation conducted by Philip Trompetter, clinical psychologist. Dr. Trompetter determined that Melody was mildly mentally retarded based on her IQ and that she suffered from a nonpsychotic mood disorder that was in remission in response to treatment. He stated that he did not have the expertise to determine if Melody's intellectual disability affected her ability to utilize reunification services and recommended that the agency refer her to Valley Mountain Regional Center (VMRC) to assess her capacity and recommend services for her.

At the conclusion of the contested 12-month review hearing, the juvenile court continued services for Melody and set an 18-month review hearing for January 2013. In addition, the juvenile court ordered the agency to refer Melody to VMRC for an assessment and gave the agency discretion to arrange overnight visits as long as Melody remained in a clean and sober living environment. The juvenile court ordered Melody to continue her individual counseling at Sierra Vista and her parenting counseling at First Step and terminated Charles's reunification services.²

Over the ensuing four months, Melody remained in Redwood and visited with Christopher there on Fridays from 10:00 a.m. to 5:00 p.m. She continued to test negative for drugs; however, she was reportedly unmotivated for drug treatment. She did not have a sponsor and minimally participated in group sessions. In addition, she was given a referral for VMRC but did not follow through in making an appointment. As a result, she was still awaiting an evaluation in January 2013.

² Charles filed a notice of appeal from the juvenile court's order terminating his reunification services (F066122). His appeal is pending before this court.

Further, there were concerns that Melody was not adequately feeding Christopher and attending to his health during their visits. According to the foster mother, on one occasion, Melody fed Christopher only a few goldfish crackers during a daylong visit, explaining that he was not hungry. The foster mother said he was very hungry when she picked him up. On another occasion, Melody took Christopher out in the rain even though he had an ear infection and a cough.

In its report for the 18-month review hearing, the agency recommended that the juvenile court terminate Melody's reunification services. The agency opined that Melody made some progress in her services plan, but not enough to demonstrate that she could independently care for Christopher.

In February 2013, the juvenile court conducted a contested 18-month review hearing. Melissa Hale testified that she had been providing Melody individual mental health counseling and individual parenting counseling since July 2012 and parenting group counseling since May 2012. Melody was placed on a hold status in late October of 2012 but returned for services a month later.

Ms. Hale further testified that she noticed that Melody had difficulty processing and retaining information as early as August 2012. Ms. Hale immediately tailored the material she provided according to Melody's ability, gave her concrete examples and checked to see if she understood the information provided. She believed the accommodations contributed to Melody's progress. She said that Melody set an individual counseling goal of stabilizing, identifying and learning to express her emotions, but Melody told Ms. Hale she did not believe she had met her goals. Ms. Hale could not estimate how many more individual sessions were required to meet Melody's counseling goals.

Sandra Santos, parent educator at First Step, and Paula McDowell, program manager at Redwood, testified that Melody's parenting skills were improving. Ms.

Santos testified that Melody was engaged in learning and Ms. McDowell testified that Melody interacted well with Christopher during visitation. Ms. McDowell further testified that, at one point, Melody had visitation with Joshua and Christopher together. Melody became overwhelmed and impatient and yelled at Joshua. However, the situation improved after the staff discontinued Joshua's overnight visitation and counseled Melody.

Rebecca Gile, intake coordinator from VMRC, testified that Melody was a client of VMRC when she was 13 years old. However, her services were discontinued after two years because her family severed contact. She said that Melody would be reinstated as a client and that as soon as she left Redwood, VMRC could provide her independent living services.

Melody testified that she was unaware that she was a VMRC client. She said she tried to contact VMRC multiple times between September and November of 2012 but only got the answering machine. She did not ask for help because she wanted to do it herself. Melody conceded that she sometimes did not remember the parenting material that was presented and needed more counseling to meet her treatment goals.

Following testimony, Melody made an offer of proof that she had a sponsor until her sponsor was incarcerated. She found a new sponsor that she planned to meet that night.

At the conclusion of the hearing, the juvenile court decided that it could not return Christopher to Melody's custody because to do so would be detrimental. In addition, the juvenile court found that the agency provided Melody reasonable services and that her progress was "fair." The juvenile court terminated Melody's reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Detrimental Return

Melody contends she complied with her reunification plan and benefitted from it. Therefore, she argues the juvenile court erred in finding it would be detrimental to return Christopher to her custody.

At the 18-month review hearing, the juvenile court must return the child to parental custody 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 parent to regularly participate and make substantive progress in the court-ordered reunification plan constitutes prima facie evidence of detriment. (§ 366.22, subd. (a).) If the juvenile court decides it would be detrimental to return the child, then, by law, the court must terminate reunification services and set a section 366.26 hearing to select a permanent plan for the child. (§ 366.22, subd. (a).)

In reviewing a juvenile court's ruling at the 18-month review hearing, we consider the entire appellate record to determine whether it contains substantial evidence, i.e., evidence that is reasonable, credible, and of solid value, to support the juvenile court's finding. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.) In so doing, we view the evidence in a light most favorable to the juvenile court. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) If there is any substantial evidence to support the juvenile court's decision, we must affirm it. (*In re Tracy Z.* (1987) 195 Cal.App.3d 107, 113.)

In this case, the juvenile court found that Melody's progress was fair and substantial evidence supports that finding. By the 18-month review hearing, Melody had not completed parenting counseling and conceded she was unable to retain the parenting material and manage her emotions. On that basis alone, the juvenile court could find

prima facie evidence of detrimental return because Melody did not make substantive progress in her services plan.

Nevertheless, Melody contends that she was situated to care for Christopher. She points out that she maintained her sobriety for a year, had a stable residence at Redwood, and was eligible for independent living assistance from VMRC. The essence of her argument is that she substantially complied with her services plan and that with assistance, she could safely parent Christopher. The problems with her argument are threefold. First, it ignores evidence that she made only fair progress in the parenting component of her services plan. Secondly, it presumes that substantial compliance is sufficient. It is not. Compliance no matter how complete is not determinative. Rather, the juvenile court must be satisfied that the child would be safe in parental custody. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1141, 1142.) Finally, there is no evidence that Melody can safely parent even with assistance. Presumably, the staff at Redwood provided some oversight while Melody visited with Christopher at the facility. Yet, there were concerns that Melody did not properly feed him and exposed him to inclement weather when he was sick. Perhaps the best evidence that Melody was not yet able to safely parent Christopher was her own admission that she did not understand or remember the parenting concepts.

We conclude substantial evidence supports the juvenile court's finding that Christopher could not be returned to Melody without exposing him to a substantial risk of detriment.

Reasonableness of Services

Melody contends the juvenile court's reasonable services finding was error because the agency did not arrange overnight visitation. The reasonableness of visitation is significant because, even though the juvenile court can terminate reunification services at the 18-month review hearing if it finds detriment, it can also exercise its discretion and

continue reunification services beyond the 18-month review hearing if it decides that services were not reasonable. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 167.) In this case, however, we conclude substantial evidence supports the juvenile court's reasonable services finding. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.)

Here, the juvenile court granted the agency discretion to arrange overnight visitation at the 12-month review hearing. Thus, the question on review is whether the agency acted reasonably in the months between the 12- and 18-month review hearings in not exercising its discretion. We conclude that it did. During that interim period, Melody was caring for Joshua overnight on weekends and Christopher during the day on Fridays. However, she became overwhelmed and verbally abusive to Joshua. As a result, Redwood had to put her visits with Joshua on hold. During this same time, Melody was not properly tending to Christopher's basic needs. Under the circumstances, the agency could reasonably conclude that if Melody could not properly care for Christopher during the day and if overnight visitation overwhelmed her then she was not prepared to care for Christopher overnight.

Having concluded substantial evidence supports the juvenile court's reasonable services finding, we find no error in its orders terminating Melody's reunification services and setting a section 366.26 hearing.

DISPOSITION

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