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

CHRISTINA M.,

Petitioner,

v.

THE SUPERIOR COURT OF MERCED
COUNTY,

Respondent;

MERCED COUNTY HUMAN SERVICES
AGENCY,

Real Party in Interest.

F067292

(Super. Ct. No. JP000700)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. John D. Kiriwara, Judge.

Christina M., in pro. per., 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., Gomes, J. and Kane, J.

Christina M., in propria persona, seeks an extraordinary writ (Cal. Rules of Court, rule 8.452 (rule)) from the juvenile court's order bypassing reunification services pursuant to Welfare and Institutions Code section 361.5, subdivision (b)(2), (10) and (11),¹ and setting a section 366.26 hearing as to her six-year-old daughter, Amy M.; four-year-old daughter, C.M.; and two-year-old son, Aaron M. (collectively children). Christina contends the juvenile court did not allow her to present facts that would have proven she was capable of caring for her children along with proof of her efforts to do so. We conclude the juvenile court's order denying reunification services is supported by substantial evidence and we deny the petition.²

PROCEDURAL AND FACTUAL SUMMARY

On November 5, 2012, the Merced County Human Services Agency (agency) received a referral from a school alleging Amy M. had disclosed that she had been sexually abused by L.P., her stepfather (stepfather). Amy M. reportedly stated that stepfather had hurt her and she pointed to her vaginal area. She also stated stepfather had bitten her on the cheek. The referral also alleged that during the past 10 days, Amy M.'s behavior had changed and she had urinated on herself on multiple occasions.

On November 9, 2012, the agency filed a petition alleging the children came within the provisions of section 300, subdivisions (b) (failure to protect), (d) (sexual abuse) and (g) (no provision for support).

At a jurisdiction hearing on December 20, 2012, the children's father, L.W., appeared and was appointed counsel.

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

² We will conclude the evidence supports the court bypassing reunification services based on section 361.5, subdivision (b)(2). Therefore, we will not discuss the evidence that supports the court bypassing reunification services based on subdivision (b)(10) and (11) of this section.

On January 9, 2013, the juvenile court took jurisdiction of the children without objection, elevated L.W.'s status from alleged father to presumed father, and ordered two psychological evaluations of Christina and L.W.

Christina was subsequently evaluated by Dr. Gary Cavanaugh, M.D. Dr. Cavanaugh concluded Christina had learning disabilities, borderline intellectual functioning, suffered from attention deficit hyperactivity disorder, and was severely impacted by an abusive and dysfunctional childhood. According to Dr. Cavanaugh, these conditions impacted her ability to parent in the areas of setting boundaries, making appropriate judgments, comprehending complex or even simple behavioral interactions, and taking independent action to care for her children. Thus, Dr. Cavanaugh concluded Christina was not capable of learning from reunification services to the point where she could adequately care for her children.

On February 11, 2013, Christina was evaluated by Dr. Michael B. Jones, PH.D. Dr. Jones noted that Christina had a history of mild mental retardation for which she started receiving supplemental security income disability benefits when she was 18 years old. Dr. Jones measured Christina's I.Q. at 71, which placed her on the lower borderline range of general intellectual functioning, i.e., at about the level of an 11 year old. However, Christina's educational, occupational, and clinical histories were consistent with mild mental retardation. Dr. Jones concluded Christina suffered from a mental disability that rendered her unable to care for and control her children adequately. Although Christina meant well and was motivated to obtain custody of her children, she lacked the cognitive and coping resources to function as a marginally adequate parent. The fact that her children were young and two had significant developmental problems made the necessary standard of care even more out of her reach. While not an abusive person by nature, she was prone to neglect and could become abusive when feeling overwhelmed. Dr. Jones concluded Christina's developmental problems, her slow cognitive and adaptive functioning and her ingrained personality problems significantly

impaired her capacity to care for her three young children especially given the fact that two of them had their own developmental challenges. Thus, he too concluded Christina was incapable of utilizing reunification services at all.

On May 16, 2013, at a contested disposition hearing, the juvenile court adopted the agency's recommendation and bypassed services for Christina based on section 361.5, subdivision (b)(2), (10) and (11), and for the father based on section 361.5 subdivision (b). The juvenile court also set a date for the 366.26 permanency hearing.

DISCUSSION

Christina contends the juvenile court's order setting a 366.26 hearing was erroneous because the court did not allow her to present facts that would prove she was capable of caring for her children or proof of her efforts to do so. In the summary of the factual basis for the petition, Christina alleges she believed the allegations of prior sexual misconduct by stepfather were false because he denied them and they did not result in stepfather being criminally prosecuted. She also contends she is a loving mother who was actively involved in the children's education and making sure their medical needs were met. In support of these assertions, Christina attached to her petition numerous school and medical records that were not provided to the juvenile court. Christina, however, does not explain when or how the juvenile court did not allow her to present these records or facts that would have proven she was capable of caring for her children. Nevertheless, Christina requests reconsideration of the juvenile court's decision not to grant reunification services.

As a preliminary matter, we will not review the documentation Christina included with her writ petition because it was not considered by the juvenile court. (*In re Zeth S.* (2003) 31 Cal.4th 396, 405.) Further, we find no error in the juvenile court's order bypassing reunification services.

“There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile

court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5[,] subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement ‘that it may be fruitless to provide reunification services under certain circumstances.’ [Citation.]” (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96 (*Cheryl P.*), second italics added.)

The juvenile court found three exceptions under section 361.5, subdivision (b) applied to Christina: the exceptions enumerated as subsections (b)(2), (10), and (11). To deny a parent reunification services under section 361.5, subdivision (b), the juvenile court must find clear and convincing evidence to support one of the exceptions. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) We will uphold the juvenile court’s dispositional order if it is supported by substantial evidence. (*Cheryl P., supra*, 139 Cal.App.4th at p. 96.) Further, since we will conclude that substantial evidence supports the court’s bypassing of reunification service under subdivision (b)(2) of section 361.5, we will limit our discussion to that subdivision.

In pertinent part, subdivisions (a), (b), and (c) of section 361.5, read:

“(1) Family reunification services, when provided, shall be provided as follows: [¶] ... [¶]

“(C) For the purpose of placing and maintaining a sibling group together in a permanent home should reunification efforts fail, for a child in a sibling group whose members were removed from parental custody at the same time, and in which one member of the sibling group was under three years of age on the date of initial removal from the physical custody of his or her parent or guardian, court-ordered services for some or all of the sibling group may be limited as set forth in subparagraph (B). For the purposes of this paragraph, ‘a sibling group’ shall mean two or more children who are related to each other as full or half siblings. [¶] ... [¶]

“(b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following: [¶] ... [¶]

“(2) That the parent or guardian is suffering from a mental disability that is described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 of the Family Code and that renders him or her incapable of utilizing those services. [¶] ... [¶]

“(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).” (§ 361.5, subs. (a), (b), (c).)

Family Code section 7827, subdivision (a) provides: “‘Mentally disabled’ as used in this section means that a parent or parents suffer a mental incapacity or disorder that renders the parent or parents unable to care for and control the child adequately.” The evidence of two qualified experts is required to support a finding under this section. (Fam. Code, § 7827, subd. (c).)

Here, the juvenile court appointed two psychologists to evaluate Christina, and each concluded Christina suffered from borderline intellectual functioning that prevented her from benefiting from reunification services. Further, the record does not support Christina’s claim that the juvenile court did not allow her to present evidence that she is capable of caring for her children or of her efforts to do so. Accordingly, we conclude that substantial evidence supports the juvenile court’s denial of reunification services under section 361.5, subdivision (b)(2).

DISPOSITION

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