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

BRITTANY Y.,

Petitioner,

v.

THE SUPERIOR COURT OF
TUOLUMNE COUNTY,

Respondent;

TUOLUMNE COUNTY DEPARTMENT
OF SOCIAL SERVICES,

Real Party in Interest.

F067293

(Super. Ct. No. JV7211)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Eric L. DuTemple, Judge.

Robert Price, Public Defender, and Clay Bedford, Deputy Public Defender, for Petitioner.

No appearance for Respondent.

Sarah Carrillo, County Counsel, and Christopher J. Schmidt, Deputy County Counsel, for Real Party in Interest.

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

Brittany Y. seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested six-month review hearing (Welf. & Inst. Code, § 366.21, subd. (e))¹ terminating her reunification services and setting a section 366.26 hearing as to her one-year-old son Zachary. Brittany contends the juvenile court erred in finding she was provided reasonable reunification services and in allowing the testimony of her minor cousin. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In October 2011, the Tuolumne County Department of Social Services (department) was alerted by hospital staff that newborn Zachary was not safe in Brittany's care. The nurses reported then 23-year-old Brittany claimed to be in contact with the "spirit world." She said spirits walked in her room and made the lights flicker and she could touch them. The nurses also reported Brittany did not know how to care for herself or the baby. She attempted to change Zachary's diaper by putting a clean diaper over a dirty diaper and needed prompting to feed Zachary as well as shower herself and brush her teeth.

Brittany told the nurses she had bipolar disorder, depression and anxiety and her mother, Cynthia, and step-father engaged in domestic violence. Cynthia has a history of child welfare intervention. In 2001, the department removed Cynthia's newborn son after Cynthia was arrested for possession of a controlled substance for sale. At the time of Zachary's removal, Cynthia was on probation for driving on a suspended license.

The department took Zachary into protective custody and placed him in the home of his maternal great-grandmother Yvonne. The department assented to Brittany living

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

with Zachary in Yvonne's home with the understanding that Yvonne would make sure Brittany was supervised at all times.

In July 2012, the department received a report that Brittany took Zachary and left Yvonne's home to stay with Cynthia. After investigating, the department took Zachary into protective custody and placed him in foster care.

In August 2012, Brittany was evaluated by psychologist Dr. Deborah Schmidt to determine whether Brittany could safely parent Zachary after six to twelve months of treatment. During the clinical interview, Brittany disclosed being physically abused by her biological father and raped multiple times as a teenager.

Dr. Schmidt found Brittany "exhibited the symptoms of a likely Posttraumatic Stress Disorder [PTSD]; a Bipolar II Disorder; a specific learning disability; and Dependent and Histrionic Traits." Dr. Schmidt concluded Brittany was not a safe and adequate parent for Zachary at that time and it was not clear whether Brittany could be within six to twelve months. Dr. Schmidt recommended Brittany complete a psychiatric evaluation to determine whether medication could alleviate her mood instability and anxiety, participate in intensive individual psychotherapy and parenting classes, work with an in-home parent educator, and obtain her own residence and employment so she could demonstrate her ability to care for Zachary independently.

In October 2012, the juvenile court declared Zachary a dependent child and ordered Brittany to participate in reunification services. The juvenile court denied Zachary's biological father reunification services and set the six-month review hearing for April 2013.

Brittany's services plan required her to obtain a suitable residence for herself and Zachary, obtain a legal source of income, comply with medical and/or psychological treatment and demonstrate the ability to be independent and self-sufficient. To assist her in meeting those objectives, her services plan also required her to participate in intensive

individual psychotherapy, complete a second psychological evaluation, undergo a medication evaluation by a psychiatrist and complete a parenting and/or in-home parenting class as directed by the case managing social worker. Brittany signed her services plan, agreeing to participate in it.

Brittany completed a second psychological evaluation with psychologist Blake D. Carmichael. As part of the evaluation, interviews were conducted with Emily Amoruso, Brittany's social worker; Jan Black, LCSW, Brittany's therapist; and Rogenia Willhite, Brittany's parenting instructor.

Amoruso said Brittany was generally compliant with her services and Brittany reported feeling better mentally. In addition, Amoruso monitored visits between Brittany and Zachary and did not have any significant concerns about Zachary's safety during visits. However, Amoruso was concerned Brittany relied heavily on Cynthia who tested presumptively positive for methamphetamine while being evaluated for relative placement. Amoruso said that the urine test was sent to a laboratory for further testing and the result was negative. However, her concerns remained given Cynthia's criminal history involving drug use and her "highly inappropriate" behavior and hostility toward Amoruso and other departmental staff. Amoruso was concerned that Brittany was too dependent on Cynthia to separate from her for Zachary's well-being.

Black said she began treating Brittany shortly after Zachary was detained and their sessions focused on teaching Brittany strategies for regulating her emotions, particularly her anger. Black said that she noticed a significant improvement in Brittany's emotional state since she had been taking psychotropic medication. Black opined that Brittany was protective and would not place herself or Zachary in a harmful situation. She also credited Brittany with becoming more independent by trying to find a job, get a driver's license and submit an application for low-income housing. Black believed Brittany was doing her best to meet the department's expectations but was hindered by her

impoverished background and limited resources. She recognized she was limited in commenting on Brittany's parenting skills because she had never seen Brittany interact with Zachary.

Willhite said she provided parenting education services and monitored visits. She had seen Brittany for four parenting sessions and monitored four weekly visits. Brittany demonstrated an interest in child development and displayed appropriate parenting skills. Willhite observed her to be attentive to Zachary's feelings and needs. She acknowledged, however, that she had only observed Brittany in a controlled environment.

Dr. Carmichael diagnosed Brittany with PTSD and dependent personality disorder ("the disorder"). Dr. Carmichael opined the disorder posed the greatest barrier to her ability to benefit from services because of its chronicity and resistance to treatment. He concluded Brittany was unable to benefit from services and cited her relationship with Cynthia as an example, stating "Despite significant concerns raised by [the department] regarding [Cynthia's] substance abuse and criminal history, and being advised that relying on her could jeopardize her reunification with Zachary, [Brittany] continued to seek her mother for direct support in taking care of Zachary. [Brittany] has a pattern of making decisions based on emotional needs without adequate consideration for possible consequences to herself or the wellbeing of her son."

In its report for the six-month review hearing, the department recommended the juvenile court terminate Brittany's reunification services, reiterating Amoruso's concerns that Brittany continued to live with and depend on Cynthia knowing that she was undermining her ability to reunify with Zachary by doing so.

In May 2013, the juvenile court convened a contested six-month review hearing. Dr. Carmichael testified that it would take twelve months or more of counseling for Brittany to reach a baseline level of functioning where she may be able to care for Zachary. Ms. Black, on the other hand, believed Brittany could reunify with Zachary if

given another six to twelve months of services. Dr. Schmidt testified family maintenance services were not an option.

Amoruso testified she had no evidence Cynthia was using methamphetamine, but believed she was because of her history of drug use, presumptive positive tests for methamphetamine and her inability to provide a urine sample when asked. Cynthia testified she last used methamphetamine in 2001.

Brittany testified she was better able to concentrate and regulate her emotions with psychotropic medication. She was working part-time as a housekeeper and applied for a driver's permit and low-income housing. Brittany denied seeing any signs Cynthia was using drugs. If she suspected it, she said she would leave Cynthia's home.

Olivia M., Brittany's 15-year-old cousin, testified she spent a lot of time with Brittany and Zachary when they were staying with Yvonne. She witnessed Brittany yell at Zachary and spank him. She said Brittany told her she had conversations with dark figures and demons and the demons told her to wake Zachary. She saw Brittany wake Zachary up 10 to 15 minutes after he fell asleep approximately twice during the day. She also saw Brittany molest Zachary by touching his genitals. Brittany told Olivia she wanted to be Zachary's lover when he was older. Olivia told her father, a police officer, about the molestation but did not know if he reported it.

Amoruso and Brittany were recalled to the stand. Amoruso denied knowing about the molestation until two days before and Brittany denied Olivia's statements including that she fondled Zachary.

At the conclusion of the hearing, the juvenile court found the department made reasonable efforts to reunify Brittany and Zachary, but that Brittany failed to regularly participate and make substantive progress in her court-ordered treatment. In so finding, the juvenile court made it clear that the case did not turn on whether Cynthia posed a

detriment to Zachary. Rather, it found the critical issues to be Brittany's inability to parent Zachary independently and to make proper decisions with respect to him.

The juvenile court terminated Brittany's reunification services and set a section 366.26 hearing. This petition ensued.

DISCUSSION

Reasonable Services

Brittany contends in essence the department did not provide her reasonable services because her reunification plan did not include services to assist her in reunifying with Cynthia. We conclude she forfeited her right to raise this contention on two grounds.

First, Brittany's trial counsel did not challenge the reasonableness of reunification services at the six-month review hearing. Consequently, Brittany forfeited her right to now claim her services were not reasonable. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1347-1348; fn. 5.)

Further, Brittany did not challenge the content of her services plan. Rather, she signed her services plan, acknowledging and assenting to its contents which did not include services designed to make Cynthia's home a safe place to raise Zachary. By not challenging the content of her reunification plan by direct appeal from the dispositional hearing, Brittany forfeited her right to now claim the plan as ordered was unreasonable. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47.)

Olivia's Testimony

Brittany contends the juvenile court erred in considering Olivia's testimony because it "does not seem reasonable in light of all the other testimony" and "does not relate to the original petition." Brittany's trial counsel did not, however, object to Olivia's testimony or move to have it stricken. Consequently, Brittany forfeited any

claim on appeal that the testimony should have been excluded as inadmissible. (Evid. Code, § 353, subd. (a).)

We find no error on this record.

DISPOSITION

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