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

L.G.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F067319

(Super. Ct. No. 07CEJ300083)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary D.
Dolas, Commissioner.

Douglas S. Feinberg 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 Kane, Acting P.J., Detjen, J., and Franson, J.

L.G. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a combined and contested 6-, 12- and 18-month review hearing (§§ 366.21, subds. (e) & (f), 366.22, subd. (a)) terminating reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to her five-year-old son, C.R., and four- and three-year-old daughters, A.R. and V.R., respectively. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

This is the second writ petition mother brings for our review in the underlying proceedings involving C.R., A.R. and V.R. In the first petition, she challenged the juvenile court's dispositional order denying her reunification services and setting a section 366.26 hearing. In July 2012, we issued an extraordinary writ directing the juvenile court to conduct a new dispositional hearing. The juvenile court did so, ordered family reunification services, and, at what became a combined 6-, 12- and 18-month review hearing, terminated reunification services and set a section 366.26 hearing. Because the facts and circumstances prior to the second dispositional hearing are germane, we include them in our summary of the case.

Initial Removal to First Dispositional Hearing

Dependency proceedings were initiated in October 2011, after mother was observed smacking and kicking then three-year-old C.R., spitting at him, and throwing a shoe at him. The Fresno County Department of Social Services (department) investigated and discovered mother's history of drug use and child neglect. Notably, in 2007, she gave birth to a daughter, G.R., who, along with mother, had a positive

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

toxicology for methamphetamine. After mother failed to reunify with G.R., her parental rights were terminated.

Mother denied striking C.R. or throwing anything at him. She also denied ever using methamphetamine. The children's father, F.R. (father), said mother experienced abrupt mood changes and he believed she may have a mental illness.

The department took C.R, two-year-old A.R., and 19-month-old V.R. into protective custody and ultimately placed them with their maternal aunt. It also filed a dependency petition on the children's behalf alleging they were described under section 300, subdivision (a) (serious physical harm), subdivision (b) (failure to protect), and (j) (abuse of sibling) because of mother's physical abuse and mental illness, mother and father's substance abuse, and father's failure to protect the children from mother.

In November 2011, the juvenile court ordered the children detained pursuant to the dependency petition. It also ordered the department to arrange reasonable supervised visits and provide the parents a list of community resources. It also set a contested jurisdictional hearing on the allegations.

Following the detention hearing, a social worker provided mother and father a "Services Plan" letter advising them of their appointment to attend the Concurrent Planning Orientation, which they attended. The social worker also mailed them a list of providers for parenting, mental health treatment, anger management, and substance abuse. In December 2011, the list was returned "unclaimed." In January 2012, the social worker mailed them a list of resources and confirmed that they received it. In addition, the department scheduled the first of twice weekly visits the day after the detention hearing.

In February 2012, at the contested jurisdictional hearing, the department filed a first amended dependency petition in open court alleging counts under subdivision (b) only. The allegations were that mother's inappropriate discipline and father's failure to

protect the children placed them at a substantial risk of being physically abused or neglected. The juvenile court adjudged the children dependents pursuant to the first amended petition and set the dispositional hearing for March 2012.

In its report for the dispositional hearing, the department recommended the juvenile court deny mother and father reunification services pursuant to section 361.5, subdivision (b)(10) and (11) because they failed to make reasonable efforts to treat the problems that led to G.R.'s removal. The department's recommendation was based on mother and father's failure to complete reunification services in G.R.'s case and their denial of need for services. They denied any substance abuse history and mother denied suffering from mental illness. Mother was, however, participating in parenting education through a local community center.

The juvenile court continued the dispositional hearing and conducted it in April 2012. In May 2012, the juvenile court issued its ruling, denying mother and father reunification services as recommended and setting a section 366.26 hearing for September 2012.

Mother and father challenged the sufficiency of the evidence to support the juvenile court's order by writ petition. In July 2012, we granted the petition and issued a writ directing the juvenile court to vacate its orders denying mother and father reunification services and setting a section 366.26 hearing and to conduct a new dispositional hearing (F064923/F064924).

Second Dispositional Hearing to Termination of Reunification Services

In September 2012, the juvenile court conducted a new dispositional hearing. The juvenile court ordered mother and father to participate in a parenting class, domestic violence, and substance abuse and mental health evaluations and any recommended treatment. The court also ordered random drug testing including hair follicle or spot tests at the department's discretion and supervised visitation with discretion to advance to

liberal visits. The juvenile court also set a combined 6- and 12-month review hearing for March 2013.

Over the next six months, mother completed her assessments and tested negative for drugs. However, she was deceptive about her substance abuse history. For example, she denied ever using methamphetamine. As a result, the assessor did not recommend substance abuse services but recommended mother complete a domestic violence assessment and a mental health evaluation. Mother completed a domestic violence assessment but was deceptive there as well. However, based on her history of abuse, the evaluator recommended that she complete a child abuse batterer's treatment program, which mother refused to attend.

Mother also completed a mental health assessment conducted by therapist Sharon Schafer. Ms. Schafer noted mother's answers and statements did not make sense and that she seemed "almost robotic." Ms. Schafer reported "something out of balance with [mother]" that precluded formulating a reasonable plan of care for her. Ms. Schafer recommended mother complete a psychological evaluation.

In February 2013, mother completed a psychological evaluation to determine in part whether she would be responsive to therapy. Clinical psychologist Gary Sunday reported that mother displayed a high level of defensiveness and strong denial of psychological or emotional problems. As a result, the test findings did not produce a true evaluation of her psychological status. Nevertheless, they did suggest mother had cognitive limitations. Consequently, Dr. Sunday recommended more intensive support for mother to develop life skills such as parenting.

Father refused to participate in services until February 2013, claiming the children were taken for no reason. However, he actively engaged with the children during visitation while mother appeared "withdrawn and detached."

In its report for the 6- and 12-month review hearing, the department recommended the juvenile court continue mother's reunification services and terminate father's. Minors' counsel objected to the department's recommendation for mother and the juvenile court set a contested hearing for April 2013.

Meanwhile, the department changed its position and recommended the juvenile court terminate mother's services because she was unable to complete her services and demonstrate she made the necessary changes in her behavior.

In May 2013, the juvenile court conducted a contested 6-, 12- and 18-month review hearing. Mother's attorney argued the department did not provide mother reasonable services. Her attorney called social worker Maria Holguin to testify and asked what the department did to provide more intensive support as recommended by Dr. Sunday. Holguin was unable to identify any services the department implemented as a result of Dr. Sunday's recommendation. She said mother was scheduled to begin the domestic violence class the day of the hearing.

At the conclusion of the hearing, the juvenile court found the department provided reasonable services but mother's progress was moderate and father's was minimal. The juvenile court terminated reunification services and set a section 366.26 hearing. This petition ensued.²

DISCUSSION

Contentions

Mother contends the juvenile court erred in terminating her reunification services. The error stems, she argues, from the juvenile court's erroneous findings that the department provided her reasonable services and she made only "moderate" progress in completing them.

² Father did not file a writ petition.

Mother's argument is based on the premise that, because the juvenile court conducted a combined 6-, 12- and 18-month review hearing, it had to apply the statute governing each review hearing in determining whether to continue or terminate reunification services. We conclude section 366.21, subdivision (e), the governing statute at the six-month review hearing, applied and the juvenile court properly terminated mother's reunification services.

Legal Principles

The dependency statutes place parameters on the duration of reunification services. In general, services are limited to 18 months from the date the child was originally removed from parental custody. (§ 361.5, subd. (a)(3).) Within those 18 months, the juvenile court is required to conduct periodic review hearings. (§ 366, subd. (a)(1).) The first hearing, referred to as the "six-month review hearing," must be conducted six months after the initial dispositional hearing, but no later than 12 months after the date the child entered foster care as determined in section 361.49,³ whichever occurs earlier. (§ 366.21, subd. (e).) The second hearing, referred to as the "12-month review hearing," must be conducted no later than 12 months after the date the child entered foster care. (§ 366.21, subd. (f).) The third hearing, the "18-month review hearing," must occur within 18 months after the date the child was originally removed from parental custody. (§ 366.22, subd. (a).)

The dependency statutes also place limitations on the duration of reunification services depending on the age of the child at the initial removal. (§ 361.5, subd. (a).) Where, as here, two or more siblings are removed at the same time and one of the children is under the age of three, reunification services are presumptively limited to six

³ Under section 361.49, "a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing ... or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent."

months from the date of the dispositional hearing. (§ 361.5, subd. (a)(1)(C); *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) At each subsequent review hearing, “a heightened showing is required to continue services.... The effect of these shifting standards is to make services during these three periods first presumed, then possible, then disfavored.” (*Id.* at p. 845.)

In this case, the directive to conduct a new dispositional hearing nearly a year after the children were initially removed from parental custody resulted in the review hearings merging into one combined hearing. Nevertheless, the presumptive time for services in this case remains six months from the dispositional hearing in September 2012. Consequently, we review the juvenile court’s findings and orders under the six-month review statute.

Statutory Criteria and Standard of Review

The juvenile court’s decision at a six-month review hearing is governed by section 366.21, subdivision (e):

“If the child was under three years of age on the date of the initial removal, or is a member of a sibling group ... and the court finds by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child ... may be returned to his or her parent ... within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.”

Further, although the juvenile court is required to make its findings by clear and convincing evidence, the standard of review that we employ is substantial evidence. “The standard of clear and convincing evidence requires a finding of high probability; the evidence must be so clear as to leave no substantial doubt; it must be sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] [¶] The duty of a reviewing court, however, is to determine whether there is any substantial evidence

to support the trial court's findings. [Citation.] In making this determination we must decide if the evidence is reasonable, credible and of solid value—such that a reasonable trier of fact could find that [the juvenile court's decision] is appropriate based on clear and convincing evidence.” (*In re Victoria M.* (1989) 207 Cal.App.3d 1317, 1326.) We review mother's contentions with the above standards in mind.

Regular Participation and Substantive Progress

Mother contends the juvenile court did not expressly find she failed to regularly participate and make substantive progress in her court-ordered treatment plan. It merely found she made “moderate” progress. Not having made the requisite finding under section 366.21, subdivision (e), she argues, the juvenile court lacked authority to terminate her reunification services. We disagree.

We can infer a required finding if it is supported by substantial evidence. (*In re Corienna G.* (1989) 213 Cal.App.3d 73, 83-84.) In this case, we conclude that it is. Though mother participated in some of her court-ordered services, she refused to participate in a child batterer's treatment program. This is a compelling deficiency in her participation since it was physical mistreatment of her children that required their removal. Her refusal to seek treatment for child abuse is sufficient to find she failed to regularly participate in her court-ordered services.

Moreover, the evidence supports the juvenile court's finding mother made only moderate not substantive progress. Mother had an untreated propensity for child abuse and perhaps an emotional or psychological problem that the therapists suspected but could not pinpoint. In addition, she was distant and aloof with the children. Until mother was willing to identify the problem and work to resolve it, she could not make the kind of progress that would allow her to safely parent her children.

Reasonable Services

Having found mother failed to regularly participate and make substantive progress in her court-ordered services, the juvenile court had the authority to terminate her services and set a section 366.26 hearing unless it found the department failed to provide her reasonable services or there was a substantial probability of return. Mother does not argue there was a substantial probability of return. Rather, she argues, the department failed to provide reasonable services.

In this case, the juvenile court found mother was provided reasonable services from the time they were ordered at the dispositional hearing in September 2012. Mother does not dispute that services during that timeframe were reasonable. Instead, she contends the juvenile court was required to assess the reasonableness of services from the detention hearing in October 2011. Had it done so, she argues, the juvenile court would have found the department did not provide any services prior to September 2012 and therefore concluded she was not provided reasonable services.

We conclude mother is barred from challenging the lack or adequacy of reunification services prior to September 2012 by forfeiture. That is so because she could have but did not challenge the reasonableness of services from October 2011 through May 2012 in her first writ petition and from May through September 2012 by direct appeal from the dispositional hearing in September 2012. (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810.)

Thus, we affirm the juvenile court's finding mother was provided reasonable services and its orders terminating her reunification services and setting a section 366.26 hearing as to C.R., A.R. and V.R. Accordingly, we deny the writ petition.

DISPOSITION

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