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

MARY B.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F067951

(Super. Ct. No. 0088972-8)

OPINION

THE COURT*

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

Mary B., in pro. per., 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 Levy, Acting P.J., Gomes, J. and Detjen, J.

Mary B. (mother) seeks extraordinary writ review (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested, combined jurisdictional/dispositional hearing denying reunification services under Welfare and Institutions Code section 361.5, subdivisions (b)(13) and (e)(1),¹ and setting a section 366.26 hearing as to her seven-month-old daughter, L.B.² Mother contends she was denied the effective assistance of counsel by her trial attorney's failure to present evidence to establish certain facts. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

Mother is a 35-year-old, mildly mentally delayed woman with a long history of drug abuse, numerous criminal convictions, and a lengthy history of involvement with the Fresno County Department of Social Services (department). Mother has given birth to eight children, including L.B., the subject of this petition.

On October 13, 1993, the department received a referral alleging general neglect with respect to mother's first born child, Lisa. At the time, mother was a minor and a dependent of the juvenile dependency court. Between 1993 and 1996, the department received three other referrals that were determined to be unfounded.

On April 3, 1997, the department received a referral that was substantiated for general neglect and caretaker absence. According to the reporting party, Lisa's father and mother were arrested, and mother did not have stable housing. In addition to there being no food in the house, the house was filthy and it contained guns, ammunition, razor blades, syringes, and pornographic material. The reporting party also stated that mother admitted using crack cocaine.

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

² The petition lists two of mother's other children who were previously removed from her custody in a prior dependency proceeding. Since these two other children were not a part of the instant proceedings, we will only address the issues mother raises as they relate to the denial of reunification services with respect to L.B.

On October 23, 1997, the department received a referral that was substantiated for general neglect. According to the reporting party, mother gave birth to her second child, Lilliana B., in a home that did not have running water, gas, or electricity. Mother and Lilliana were transported to a hospital by ambulance. Lilliana was detained because she and mother both tested positive for marijuana and cocaine. The court initially did not order any family reunification services for mother because her whereabouts were unknown. However, on August 7, 1998, the court ordered reunification services addressing substance abuse issues until October 1998. Mother, however, failed to comply with her services and failed to maintain contact with the department, which resulted in the court terminating services on October 14, 1998. Lisa and Lilliana were both adopted on December 22, 2000.

From 1998 to 1999, mother was arrested several times for possession of controlled substances. In May 1999, mother was convicted of possession of a controlled substance and committed to the California Rehabilitation Center.

Mother's second set of children, Javier T. and Mariah S., were also removed from her custody because of mother's drug abuse. When Javier was born, on January 14, 2004, he tested positive for cocaine. The following day, Javier and Mariah were removed from mother's custody because of Javier's positive drug test, mother's use of cocaine during the pregnancy, her long history of drug use, and mother's habit of leaving Mariah alone for long periods of time while mother used drugs.

On April 26, 2004, the court provided mother with the opportunity to change her lifestyle when it ordered mother and Javier and Mariah's father to participate in family reunification services that addressed her substance abuse. Although mother was sent to two different inpatient programs, she failed to participate in the services and they were terminated around January 31, 2005. On October 17, 2005, the court awarded custody of Javier and Mariah to their father. However, the father later returned Mariah to mother.

Mother subsequently had three other children, Jose R., Angela P. and Sofia P., from two different fathers. On April 6, 2011, Mariah, Jose, Angela and Sofia were removed from mother's home due to the living conditions there, the lack of adult supervision, and mother being under the influence of drugs when she did provide the children with care and supervision.

On November 2, 2011, the court denied mother reunification services. Angela and Sofia were eventually returned to the custody of their father, while Mariah and Jose remained in foster care.

On August 31, 2012, mother was convicted of possession of a controlled substance and sentenced to a year in local custody. On March 15, 2013, she was convicted of receiving stolen property and sentenced to a 32-month prison term. Her tentative release date is May 28, 2014.

On April 20, 2013, mother gave birth to L.B. Although mother initially tested positive for methamphetamine, the department was subsequently informed that a confirmatory test came back negative for any drugs.

On April 22, 2013, a protective hold was placed on L.B. During an interview with a social worker, mother reported she began using methamphetamine in 2007, she smoked it once every three weeks, and she last used methamphetamine two days before her arrest in August 2012. Mother did not believe she had a drug problem but she wanted to get into a drug program because she thought she had to in order to get her children back.

Following a combined jurisdiction and disposition hearing, on September 6, 2013, the court found that the department had proved jurisdiction pursuant to section 300, subdivisions (g)(1) and (j)(1). The court also denied reunification services pursuant to section 361.5, subdivisions (b)(13) and (e)(1) and ordered that the permanency hearing (§ 366.26) be set within 120 days.

DISCUSSION

Mother contends trial counsel was ineffective because her trial attorney failed to introduce evidence to prove the following facts: 1) mother was not using drugs at the time of the hearing; 2) mother and L.B. were drug free when L.B. was born; 3) mother had made guardian arrangements for L.B. in a safe and stable environment with Darlene H.; 4) mother had applied for the ankle monitor program which would have allowed her to have custody of L.B.; 5) mother participated in several parenting classes; 6) mother is currently participating in the re-entry HUB/substance abuse program and has applied to go to Fresno First, a program that accepts children; and 7) mother has support from her common-law husband, Luis P., and friend, Darlene H. Mother's contention fails, however, because she has not demonstrated any prejudice from the purported ineffective assistance of counsel.

In order to show ineffective assistance of counsel, a petitioner must prove that trial counsel's performance was deficient, resulting in prejudicial error. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1667-1668.) We need not evaluate counsel's performance if petitioner fails to prove prejudicial error, i.e., that absent counsel's errors, there is a reasonable probability that she would have received a more favorable result. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.) Therefore, in order to prevail on a claim of ineffective assistance of counsel, mother would have to show that, but for trial counsel's inadequate presentation of her case, there was a reasonable possibility the juvenile court would have ordered 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.*.)

Additionally, section 361.5, subdivision (e)(1) provides: “If the parent or guardian is incarcerated ... the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child.”

The juvenile court relied on section 361.5, subdivisions (b)(13) and (e)(1) to deny mother reunification services. In order to deny a parent reunification services under section 361.5, the court need only find sufficient evidence to support one of the subparts under subdivision (b) or to support a finding under subdivision (e) that reunification would not be in the best interest of the child. (Cf. *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72.) We will uphold the juvenile court’s disposition order denying reunification services if it is supported by substantial evidence. (*Cheryl P.*, *supra*, 139 Cal.App.4th at p. 96.)

Section 361.5, subdivision (b)(13), in pertinent part, provides:

“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: ¶ ... ¶

“That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and ... has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.”

It was undisputed in the juvenile court that mother had “a history of extensive, abusive, and chronic use of drugs” and that she had failed or refused to comply with court-ordered substance abuse treatment in two prior dependency proceedings. Further, none of the facts mother’s counsel allegedly failed to establish in the record undermined the court’s reliance on section 361.5 subdivision (b)(13) to deny mother reunification services. Accordingly, we reject mother’s ineffective assistance of counsel claim because she has not shown that it is reasonably probable the court would have ordered reunification services but for her counsel’s alleged deficient representation.

DISPOSITION³

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

³ Mother requests appointment of substitute counsel “due to language barrier and her learning disability[.]” Her request is denied.