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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

B.B., Petitioner, v. THE SUPERIOR COURT OF FRESNO COUNTY, Respondent; FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES, Real Party in Interest.	F068664 (Super. Ct. No. 13CEJ300015) **O P I N I O N**

THE COURT*

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

B.B., in pro. per., for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and Amy K. Cobb, Deputy County Counsel, for Real Party in Interest.

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* Before Gomes, Acting P.J., Franson, J., and Peña, J.

B.B. (mother), in propria persona, seeks an extraordinary writ 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 four children. She contends she completed all of her court-ordered services and she and the social worker did not communicate well. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

In January 2013, the Fresno County Department of Social Services (department) took mother's four children ranging in age from 11 months to 7 years into protective custody after they were found living in an unsanitary and unsafe environment. The department filed a dependency petition on the children's behalf alleging the condition of the home placed them at a substantial risk of harm. It also alleged mother had seizures but refused to take her medication. The children were placed together in foster care and ultimately with a relative.

The juvenile court detained the children and ordered the department to offer mother parenting classes, substance abuse and mental health evaluations, and random drug testing.

In February 2013, the juvenile court sustained the petition and adjudged the children its dependents. That same month, mother tested positive for methamphetamine and entered inpatient substance abuse treatment at the Comprehensive Addiction Program (CAP). She also participated in a mental health assessment.

In March 2013, mother began individual therapy. Several days later, she left CAP, claiming she was asked to leave or she would be arrested. According to staff at CAP, mother decided to leave on her own. That same month she entered Spirit of Women,

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

another inpatient treatment program. She asked to leave after a week stating other clients in the program were "egging [her] on." Mother agreed to complete the Spirit of Women program but left in early April. She said another client was trying to "fight" her and she was going to Sacramento to sue Fresno County. Over the next five months mother made various excuses why she could not reenter drug treatment. Also during this period mother did not visit the children.

In July 2013, the juvenile court conducted the dispositional hearing and ordered reunification services for mother and the father of the two youngest children. Mother's services plan included the same services previously ordered.

In late July 2013, mother tested positive for methamphetamine but denied using the drug. She said she tested positive because she had sexual intercourse with the father of her unborn child. In September, mother began inpatient treatment at WestCare but left after a week. In October, she resumed visitation.

In November 2013, the department filed its report for the six-month review hearing, recommending the juvenile court terminate mother's reunification services and set a section 366.26 hearing.

In December 2013, the juvenile court ordered mother to submit to a hair follicle test and confirmed a contested six-month review hearing for January 2014.

In January 2014, the juvenile court conducted a contested six-month review hearing. Mother's position at the hearing was that the juvenile court should continue her reunification services because she made sufficient progress in meeting her service plan objectives.

Social worker Junita Wibisono testified mother completed a parenting class and was participating in individual therapy and making significant progress. However, mother had not made significant progress in substance abuse treatment. She unsuccessfully attempted inpatient drug treatment three times and then in November

presented a note from her doctor stating she could not participate in inpatient treatment. As a result, her substance abuse counselor recommended she participate in outpatient treatment. Mother did so and was doing well in the program. She was expected to complete the program in May. However, the department's plan was to refer mother to an inpatient program once the baby was born. Ms. Wibisono said she had just learned that the baby was born the week before.

Wibisono further testified mother's hair follicle test yielded a positive result for methamphetamine which mother could not explain. Mother subsequently provided urine samples which yielded negative results.

Wibisono testified she based her recommendation the juvenile court terminate mother's reunification services on mother's moderate progress in substance abuse treatment and failure to visit the children from April to October.

Mother testified she did not visit the children because their caretaker had a "problem" with her. She denied using methamphetamine in the three months prior to December. She could not explain the positive test result but thought maybe her brother put methamphetamine in her drink.

The juvenile court found mother was provided reasonable services but that she failed to regularly participate in them and her progress in completing them was moderate. The court further found it would be detrimental to return the children to her custody and there was not a substantial likelihood they could be returned with continued services. Consequently, the juvenile court terminated mother's reunification services and set a section 366.26 hearing to implement a permanent plan. This petition ensued.

DISCUSSION

Mother contends she completed her court-ordered services and can provide her children a safe and drug-free home. She also contends there was poor communication between her and the social worker and the social worker refused to provide her copies of her drug test results. Mother asks this court to direct the juvenile court to return the children to her custody.

Real party in interest argues mother's writ petition should be dismissed for failure to comply with the content requirements for a writ petition. (Cal. Rules of Court, rule 8.452(a) & (b) (rule).)

We will liberally construe a writ petition seeking review of an order setting a section 366.26 hearing. (Rule 8.452(a)(1).) In light of mother's contentions and the relief she seeks, we construe her petition as a challenge to the juvenile court's finding it would be detrimental to return the children to her custody and its decision not to do so.

The juvenile court was required to return the children to mother's custody unless it found by a preponderance of the evidence that doing so would create a substantial risk of detriment to their safety, protection or physical or emotional well-being. In assessing detriment, the juvenile court considers the degree to which the parent participated and progressed in his or her court-ordered treatment program. Failure to regularly participate and make substantive progress is prima facie evidence of detriment. (§ 366.21, subd. (e).)

On review we determine whether substantial evidence supports the finding the juvenile court made in this case, that it would be detrimental to return the children to mother's custody. In our view, such evidence exists in this record.

The children were removed from mother because of the ongoing squalid condition of the home. There was no electricity and there were live roaches crawling on the floor and dead roaches on the wall. There was a broken window as well as piles of clothing on

the floor and boxes stacked to the ceiling. In addition, mother disclosed a long-standing problem with methamphetamine use. Yet, after nearly a year of drug treatment mother had not completed an inpatient program as recommended and was still using methamphetamine as evidenced by her positive hair follicle test result in December 2013.

On this evidence the juvenile court properly assessed mother's progress as less than substantive and found prima facie evidence of detriment. Accordingly, the juvenile court also properly declined to return the children to mother's custody.

Since mother does not seek an order continuing her reunification services or challenge any of the findings underlying such an order such as reasonableness of services and probability of return, we will not address them. We, thus, affirm the juvenile court's orders terminating mother's reunification services and setting a section 366.26 hearing and deny the petition.

DISPOSITION

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