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

LISA R.,

Petitioner,

v.

THE SUPERIOR COURT OF KINGS
COUNTY,

Respondent;

KINGS COUNTY HUMAN SERVICES
AGENCY,

Real Party in Interest.

F070513

(Super. Ct. No. 13JD0031)

OPINION

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Jennifer Lee Giuliani, Judge.

Cindy Crose Kliever and Kliever Law Group, for Petitioner.

No appearance for Respondent.

Colleen Carlson, County Counsel, and Rise´ A. Donlon, Deputy County Counsel, for Real Party in Interest.

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

Lisa R. seeks extraordinary writ relief from the juvenile court's orders terminating her reunification services and setting a Welfare and Institutions Code section 366.26¹ hearing as to her 10-year-old son Andrew and eight-year-old daughter Ashley. Lisa contends the juvenile court violated her right to due process and erred in finding that it would be detrimental to return the children to her custody and that she was provided reasonable services. She asks this court to issue a writ directing the juvenile court to return the children to her custody or order that reunification services be continued. We deny the petition.

PROCEDURAL AND FACTUAL SUMMARY

The juvenile court exercised its dependency jurisdiction over Andrew and Ashley in July 2013 because Lisa maintained contact with her boyfriend Michael after he sexually molested her daughter, S.R. The abuse allegation was disclosed in April 2011 when Lisa's then 15-year-old sister A.F. told a police officer Michael sexually assaulted her while she was visiting his home. She said that Andrew who witnessed the incident said that Michael did the same thing to his sisters, then 15-year-old E.R. and 12-year-old S.R. E.R. told the officer that Michael rubbed her chest area, "private," and buttocks and had been doing so on a weekly basis since she was 11 or 12 years old. He put his hand down her pants and rubbed her vagina. When she told him to stop, Michael explained that he and Lisa were having problems and he found E.R. attractive. He told E.R. that if she told anyone he would get into trouble and it would cause her family to fall apart because Lisa did not have a job and needed him. E.R. said she told Lisa about the sexual molestation the year before and that Lisa told Michael she would leave him if it happened again. E.R. said the molestation did not stop.

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

S.R. told the officer that just the night before, Michael reached down her pants and massaged her “private area” while she was lying on the couch. She tried to get away but could not and he stopped on his own. She described another incident when he walked up behind her as she sat at the computer and put his hand down her pants and “fingering her.” Another time, he stood next to her while she was in bed and rubbed his penis on her which left something wet on her pajamas.

Lisa denied the allegations against Michael and refused to believe them. She also denied that E.R. told her about Michael touching her the year before. Following the investigation, Michael was arrested. The next day, E.R. tried to recant her accusations. She said she did not want Michael to be incarcerated for a long time because he was the “breadwinner” and she wanted her siblings to have a dad.

In an interview following Michael’s arrest, Lisa said she believed her daughters and would protect them. She said she would not allow Michael back into the home.

Michael was convicted of two felony counts of lewd or lascivious acts with a minor (Pen. Code, § 288, subd. (c)(1)) and sentenced to three years in state prison. In January 2013, Michael was released from prison and placed on an electronic monitoring program. Prior to his release, Lisa requested that he be released to her home. Her request was denied. Michael’s probation officer explained the conditions of Michael’s release to Lisa, including the prohibition on having any contact with children, especially S.R. and E.R.

In April 2013, the Kings County Human Services Agency (agency) received a report that the GPS tracker picked up Michael’s signal in a parking lot where he had been stationary for two hours. They located him sitting in the back seat of a car with then 14-year-old S.R. stroking her hair. Lisa was sitting in the front seat. Michael was arrested for violating his probation.

Lisa told the investigating social worker she knew Michael could not be around the children in her home or his but she thought he could have contact with them in a public place. She took S.R. to see Michael because S.R. was having problems with her boyfriend and wanted Michael's advice. Lisa said S.R. shared her problems with Michael because she could trust him like a father. The social worker asked Lisa if she remembered the conversation she had with the agency in 2011. She said she remembered but "that was before the girls told [her] the truth." She said the girls recanted and the charges as to them were dropped. She said once Michael was off probation he would move back into her house.

Andrew and Ashley told the social worker they lived with Lisa, Michael and their sisters. Andrew said Michael sometimes cooked dinner and enjoyed playing with the family dog. Andrew said he went to McDonalds with his sisters and sometimes with Michael.

S.R. said Michael and Lisa were in a relationship and were happy. S.R. knew that Michael had been in prison but did not know why. She said she found out she could not see Michael but did not know why. She said he had his own apartment and they did not see him often, maybe once a week.

The juvenile court assumed dependency jurisdiction over the children. The agency placed E.R. and S.R. with their biological father and the court terminated its dependency jurisdiction as to them. The agency placed Andrew and Ashley in foster care.

In July 2013, at the dispositional hearing, the juvenile court denied Michael reunification services but ordered reunification services for Lisa. The agency had not filed a copy of Lisa's reunification plan prior to the hearing, but reported that she was registered for non-offender sexual abuse counseling, parenting classes and mental health counseling. A week later, the agency filed Lisa's reunification plan, which required her

to complete the services for which she was already registered. In addition, it prohibited her from residing with or allowing her children contact with anyone who had a criminal history with convictions above a minor traffic citation, arrests for crimes that could endanger the children's safety or a child welfare history. The reunification plan reflected Lisa's signature acknowledging that she participated in developing the plan and received a copy of it.

By January 2014, Lisa had completed the non-offenders sexual abuse treatment program and the parenting program but maintained contact with Michael in ways that suggested they had an ongoing relationship. In September 2013, Michael's probation officer told social worker Lorena Lantsberger that Michael asked daily for permission to contact Lisa and was cited for posting naked pictures of himself on the internet. Michael was also trying to contact Lisa and all four children via Facebook and Skype. The probation officer confiscated Michael's computer which Lisa tried to retrieve. In November 2013, the agency learned of a recent report that Michael molested S.R. Michael's probation officer was aware of the sexual molestation allegation but said he did not pursue charges because S.R. recanted her story as she had done before. Lantsberger explained to Lisa that she needed to demonstrate she could protect the children from Michael by not allowing him contact with them if she wanted them returned to her custody. Lisa believed she could keep her relationship with Michael separate from the children.

In January 2014, at the six-month review hearing, the juvenile court continued reunification services for Lisa and approved an updated reunification plan that required Lisa to continue participating in individual therapy. The reunification plan also required Lisa to address how her relationship with Michael hindered her ability to reunify with the children.

In February 2014, Lisa met with Lantsberger to discuss her case plan. She told Lantsberger she no longer visited Michael at his residence but spoke to him on the telephone to ask for help with repairs. Lisa acknowledged she needed to demonstrate that she could protect her children. Later that month, Lisa's case was assigned to social worker Gladys Sandoval.

In March 2014, Lisa met with Sandoval to discuss her reunification plan. She told Sandoval that she only maintained communication with Michael by text message for the purpose of getting help with handy work. She said she had been with Michael for 10 years and it was hard to let go. Sandoval suggested she utilize therapy to address her issue.

In May 2014, Lisa told Sandoval that she no longer initiated contact with Michael but that he texted her once in a while to see how the children were doing. She said she understood she could not have contact with Michael if she wanted to reunify with her children.

In early June 2014, Lisa began unsupervised visitation with the children. Just over a week later, a social worker saw Lisa's car parked for a couple of hours in front of Michael's residence and took pictures of Lisa's car. Sandoval confronted Lisa with the picture after Lisa denied having in-person contact with Michael and allowing anyone else to use her car. Lisa admitted going to Michael's house to get money for gas but denied entering the house, claiming she stayed outside on the porch. Sandoval told Lisa the social worker who saw her car did not see her in the front of the residence. Lisa responded that the children were not with her and she did not plan on taking them there. She further stated she did not know that the agency would be "undercover and having surveillance on her."

In its report for the 12-month review hearing, the agency recommended the juvenile court terminate Lisa's reunification services because she continued to maintain

contact with Michael and did not understand the severity of the risk he posed to the children.

The juvenile court set a contested 12-month review hearing which was first convened on September 24, 2014. In the interim, Michael filed a section 388 petition informing the court that he completed the rehabilitation programs required by probation and asking the court to order reunification services for him. In the petition, Michael stated he would no longer be on probation as of September 18, 2014. He also attached a letter from a licensed clinical social worker stating he had made substantial progress in treatment and his risk level for re-offense was low. A hearing on his petition was set for September 24, 2014.

On September 24, 2014, the juvenile court continued the hearing on the section 388 petition to October 2014 and conducted the first session of the 12-month review hearing. Lisa's attorney took the position that the agency did not provide Lisa reasonable services because it did not make it clear it wanted her to sever all ties with Michael in order to reunify with the children. In addition, her attorney argued the curriculum for the non-offender sexual abuse treatment program further confused matters because it included information on how Lisa and the children could live with Michael.

Lisa testified that Michael lived with her grandfather and was her grandfather's caretaker. She went to her grandfather's house to get cash from Michael who said he would leave it on the porch steps. She did not know she was not supposed to go to Michael's residence. She entered the house and the only other person present besides her grandfather was her uncle. She denied being there because she did not want the agency to think that she was visiting Michael. She said she did not want anything to do with Michael anymore.

Lisa further testified that the curriculum for the non-offender sexual abuse treatment program included information about how to safely reside with a sex offender

which she found confusing. However, she was never led to believe that Michael would be allowed to live with her and the children.

Sandoval testified that Lisa was not prohibited from having contact with Michael by her reunification plan or court order. However, her dishonesty about her contact with him raised concern that she would allow him contact with the children and attempt to hide it. Sandoval was not however aware that Michael had had any contact with the children. Following Sandoval's testimony, the juvenile court continued the hearing to October 2014.

On October 22, 2014, the juvenile court reconvened the contested 12-month review hearing and before hearing further testimony denied Michael's section 388 petition. Lisa's attorney called Candice Hendrickson, Lisa's therapist, who testified she taught the non-offender program and described the curriculum. She said she had no concern about the children being in Lisa's care. However, in response to questions posed by the court, she acknowledged concern that Lisa allowed Michael contact with S.R. despite his criminal conviction and court order prohibiting it, that Lisa denied any memory of the agency telling her she needed to protect the children from him and that Lisa changed her story multiple times with respect to the June incident. Hendrickson agreed that Lisa's dishonesty underscored the risk she posed to the children.

At the conclusion of the hearing, the juvenile court found it would be detrimental to return the children to Lisa's custody and that the agency provided her reasonable services. The court also terminated Lisa's reunification services and set a section 366.26 hearing.

This petition ensued.

DISCUSSION

As a preliminary matter, we dispose of Lisa's claims that the juvenile court violated her due process rights. She claims the violations occurred when the juvenile

court ordered reunification services at the dispositional hearing before the agency had filed the reunification plan and when the court conducted an 18-month review hearing without proper notice. Lisa has failed however to show how the absence of a filed reunification plan violated due process especially since she participated in the selection of the services that ultimately comprised her court-ordered plan and was registered for them before the dispositional hearing was conducted. As to the notice violation, the record clearly designates the hearing conducted in September and October of 2014 as a 12-month not an 18-month review hearing.

Lisa also contends her dishonesty concerning her contact with Michael was an insufficient basis for finding it would be detrimental to return the children to her custody especially since Michael was no longer barred from being with the children and was considered low risk to reoffend. We disagree. Michael is a sexual offender who placed the children at risk of being sexually molested. Lisa increased that risk by her unwillingness or inability to shield her children from it. She demonstrated this when she failed to act on E.R.'s initial disclosure of molestation, refused to believe Michael sexually molested E.R. and S.R., wanted Michael released to her custody, repeatedly allowed him contact with the children in violation of his probation, and hid her contact with him and lied about it. Thus, the detriment Lisa posed to the children was more than her dishonesty about her contact with Michael; it was her determination to have contact with Michael notwithstanding the risk of harm he posed and her refusal to protect the children from him.

Lisa contends she was not provided reasonable services because Sandoval was not familiar with the curriculum for the non-offender sexual abuse treatment program. To that end she cites Sandoval's testimony that she was unfamiliar with the book used for the program. However, Lisa fails to show in this writ how Sandoval's lack of familiarity with the book renders the program an inadequate or inappropriate service for her

reunification needs. Further, Lisa completed the program and never raised any objection about the curriculum before the juvenile court or challenged it by direct appeal either from the dispositional hearing or the six-month review hearing. Consequently, she forfeited the right to challenge the reasonableness of the non-offender program.

Lisa further contends she was not provided reasonable services because Sandoval did not help her address her dishonesty concerning her contact with Michael. Lisa contends Sandoval could have for example contacted Hendrickson and instructed her to incorporate that issue into her mental health counseling. Lisa fails however to show that additional assistance in that area rendered her services unreasonable. According to Lisa's revised reunification plan, she was required to address how her relationship with Michael impacted her ability to reunify with the children. She knew that her ongoing relationship with Michael was a concern and that Hendrickson was available to discuss it with her. Nevertheless, she continued to hide the relationship and lie to Sandoval. Under the circumstances, there is no reason to believe that specifically directing Hendrickson to address Lisa's dishonesty would have enhanced Lisa's ability to reunify with the children or that failing to do so rendered Lisa's services unreasonable.

We find no error and deny the petition.

DISPOSITION

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