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

JAZMINE H.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Real Party in Interest.

F070567

(Super. Ct. No. 13CEJ300001)

OPINION

THE COURT*

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

Jennifer L. Hamilton for Petitioner.

No appearance for Respondent.

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

Daniel C. Cederborg, County Counsel, and Amy K. Cobb, Deputy County Counsel, for Real Party in Interest.

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Pursuant to California Rules of Court, rules 8.450 and 8.452, Jazmin H. (mother) seeks review of the juvenile court's order terminating reunification services and scheduling a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26¹ (section 366.26 hearing), with respect to her children L.P. and M.P. Finding no merit in her challenge, we deny mother's petition.

FACTUAL AND PROCEDURAL BACKGROUND

Jurisdictional Findings and Case Plan

When mother came to the attention of the Fresno County Department of Social Services (department), she had five children in her custody: T., age 9; S., age 7; M., age 6; L.P., age 4; and M.P., age 3.²

In February of 2013, mother submitted on a section 300 petition filed January 3, 2013, alleging that S. suffered serious physical harm inflicted nonaccidentally by mother when she hit him with a studded belt. S. also had a four or five-inch healed gash mark on his upper chest where mother had scratched him with the metal side of a screen window. S. reported to law enforcement that mother hit him and his siblings with broom handles on the back of their legs. T. reported that mother had choked her and thrown a bottle of hot sauce at her foot, resulting in the loss of her toe nail. Other inappropriate discipline by mother included biting daughter M. on the cheek and pulling her children's hair. The children were removed from mother's care.

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

² Sergio H. is the presumed father of T., S. and M.; Miguel B. is the presumed father of L.P. and M.P. Neither is a party to this writ, nor are T. S., and M. subject children of this writ.

In March of 2013, the children were adjudged dependents of the juvenile court and reunification services ordered for mother, including parenting classes, substance abuse treatment, mental health treatment, drug testing, and domestic violence evaluation and recommended treatment.

Six-Month Review Report and Hearing

The report prepared in anticipation of the six-month status review stated that mother had completed a parenting program and was currently participating in an outpatient substance abuse program, but that she needed to be “more consistent in attending her Court ordered services.” At the time, mother was living in her own apartment and was working as a farm laborer. The report recommended that mother receive an additional six month of reunification services.

In July of 2013, mother was terminated from her child abuse batterer’s program due to excessive absences. Although mother primarily tested negative in random drug tests conducted from January through April of 2013, she failed to show for the majority of tests from May to August of 2013, and she was terminated from her outpatient program due to lack of attendance. The case plan update in August of 2013, stated that mother had not yet met any of her plan objectives except that she had completed a parenting program in June of 2013.

12-Month Review Report and Hearing

In November of 2013, mother’s unsupervised visits with her children were changed to supervised visits after mother was found to be using inappropriate parenting skills with her children.

The report prepared in anticipation of the 12-month review hearing stated that mother’s progress toward alleviating or mitigating the causes necessitating placement outside the home had been “good,” but that continued placement of the children in foster care was necessary and appropriate.

At the 12-month-review hearing held in March of 2014, the juvenile court ordered an additional six-months of continued reunification services for mother. By this time, mother had completed an inpatient substance abuse program and while there, did not have any positive drug tests. She was participating in weekly aftercare services, and also participating in a child abuse batterer's treatment program. Mother had regularly and consistently contacted and visited her children, although her daughters T. and M. refused to visit with her due to her behavior. Mother was evaluated for mental health services and therapy was found not needed.

18-Month Review Report and Hearing

The report prepared in anticipation of the 18-month review hearing requested that reunification services for mother be terminated. Mother completed her required parenting program; was not in need of mental health counseling; finally completed her outpatient substance abuse aftercare program in May of 2014 after a number of stops and starts; had numerous no shows at random drug testing, although she was aware that a no show was considered a positive test; and was finally in the process of completing her child abuse batterer's program. T. and S. both expressed a desire not to return to mother's home. The children reported that mother told them she no longer wished to visit with T., S. or M., a statement mother admitted making.

The social worker reported that mother had made "moderate progress" toward ameliorating the conditions that prompted juvenile court jurisdiction. But despite completing most aspects of the case plan, the social worker opined that sufficient risk to the children existed to warrant continued out of home placement, citing the older children's refusal to visit with mother because she yelled and used profanity toward them and mother allowing L.P. and M.P. contact with their father despite the fact that he was not to have unsupervised contact with them.

On June 25, 2014, mother filed a Statement of Contested Issues & Witness Statement stating that it would be in the best interest of L.P. and M.P. to provide mother with an additional six months of reunification services. On July 1, 2014, mother withdrew her request for a contested hearing. Reunification services for the older three children were terminated, but continued for the younger two.

24-Month Review Report and Hearing

On October 16, 2014, the department prepared a 24-month status review report requesting family reunification services for the youngest two children be terminated. L.P. was said to be developmentally on target for her age, but was receiving mental health services and under psychotropic medication management due to difficulties regulating emotions, nightmares, aggression, defiance and inattention, all exacerbated following visits with mother. L.P.'s therapist supported the recommendation to terminate mother's services as L.P. did not appear to be benefiting from that relationship. Both L.P. and M.P. liked living with their grandmother, who stated she was willing to provide support and care for them if mother was unable to reunify with them.

Mother's visits with the children had gone well at times and not so well at other times. The department had not been able to allow liberal or extended visits as mother was without stable housing.

In summary, the social worker reported:

“Despite [mother] completing most aspects of the case plan, sufficient risk does exist to warrant continued out of home placement. There are concerns with [mother's] ability to progress in her visits as she does not have stable housing. [Mother] has completed 31 of 52 classes in the Child Abuse Batterer's Program. On October 13, 2014, a staffing was scheduled to inform [mother] that the Department would be recommending that her Family Reunification services be terminated due to not making significant progress in the reunification process. [Mother] failed to show for the staffing. The Department became involved with this family due to physical abuse and substance abuse issues. To date, [mother] has not demonstrated she has fully benefited from services in order to reunify with her children.

There has not been significant progress in ameliorating issues that initially prompted the Court's jurisdiction. Therefore, reunification with [mother] is not in the best interest of [L.P.] and [M.P]."

At the contested hearing held December 2, 2014, Sonia Gonzales, a friend of mother's and cousin of L.P. and M.P.'s father, testified that mother was living in Gonzales's home with her and her four children. At times, Gonzales's other two children also stayed in the home.

Social Worker Terrill Woods testified that mother had completed 40 of 52 weeks of the batterer's treatment course and had completed the other programs ordered. Although Woods testified that he had checked out Gonzales's home and thought it was an appropriate placement, he did not think mother had the ability to safely have the children returned to her care because she had "issues" parenting her children, such as following the rules for visitation, returning the children in a timely fashion, and the report that mother had recently taken the children to a store and they stole candy. Woods noted that visits with mother resulted in the children not listening to their grandmother upon their return. Woods acknowledged that mother's random drug testing since July 1, 2014, had been negative. Woods testified that he was still concerned with mother allowing the children to see father unsupervised because the case involved domestic violence and child abuse. Woods noted mother still had anger issues that he did not think she had resolved.

Mother testified in her own behalf that L.P. and M.P.'s father did not come and visit them, but that they had seen their father's brother and mistook him for their father. According to mother, she had 10 child abuse batterer's classes left to complete, at one class per week. Mother acknowledged not complying with the case plan at the beginning, but claimed that she was now on track. She claimed to have been sober almost a year.

In closing argument, counsel for the department noted that mother had received reunification services for L.P. and M.P. beyond the general 18-month maximum and she still had about three months to go to complete the child abuse batterer's treatment

program. While counsel acknowledged that mother had made significant changes in her behavior and substance abuse issues, she still did not understand her daughter L.P.'s mental health needs. Counsel argued that, "[S]ince this child does have such important developmental needs, mental health needs, it seems unreasonable to believe that it would be safe for the children to be returned to mother on any kind of plan at this time." Counsel also argued that the underlying issues involved in removing the children had not yet been remedied and recommended that the juvenile court terminate mother's reunification services and set a permanent plan hearing.

Mother's counsel argued that, because mother now had a home with Gonzales and had completed most of the ordered treatment, she should be allowed to have the children returned to her care with family maintenance services.

Counsel for the children argued that, while mother had made significant progress in the area of domestic violence, she had "limitations" in the area of parenting, especially as it related to L.P.'s mental health needs. Counsel recommended that reunification services be terminated.

The juvenile court, in terminating reunification services, stated that it was taking mother's entire case into consideration and found that mother had been given reasonable services, that mother's progress toward mitigating the causes necessitating placement had been good, but that it had been very recent. The juvenile court noted the statutory guidelines, mother's "efforts and progress and extent to which she cooperated and availed herself of these services," and the fact that mother "waited so long to cooperate and participate in these services to the point now that we're at the end of the time limit." As summarized by the juvenile court:

"She's demonstrating that she's made some improvements in her own life, but because that's coming so late, she's not demonstrated that she's maintained and been able to gain that relationship with those parenting skills to be able to provide for her children and I think that's where the

discrepancy lies. [Mother] has made progress that's demonstrating her changes but it's coming so late that she doesn't have the ability to demonstrate that she's benefited from those classes and service to the point where she can now provide for her children's safety, protection and well-being."

The juvenile court also stated that it was "mindful" of the comments made by the children that they expressed comfort and stability in their current placement and were not requesting to be returned to mother's care. The juvenile court found that return of L.P. and M.P. to mother would not be in their best interest and would create a risk of detriment to their safety and physical and emotional well-being. The juvenile court ordered a section 366.26 hearing set, which is set for March 17, 2015.

Mother filed a timely notice of intent to file a writ petition.

DISCUSSION

Risk of Detriment

Mother contends there is no substantial evidence to support the juvenile court's detrimental finding. We disagree.

Section 366.25 governs cases in which reunification services have been extended to 24 months. At the 24-month review hearing, the child must be returned to his parent or parents, "unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.25, subd. (a)(1).) The department has the burden of establishing detriment. (*Ibid.*) "The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (*Ibid.*) If the child is not returned to his or her parents at the 24-month review hearing, the juvenile court must set a section 366.26 hearing. (§ 366.25, subd. (a)(3).)

“[T]he risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child’s physical or emotional well-being.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*.) Although the juvenile court must consider the parents’ progress in services, “the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child.” (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.) “Even if the parent has ‘largely complied’ with his or her reunification plan and some evidence justifies return of the child, the court must look to the totality of the facts, including the parent’s progress, and may find that return would be detrimental if those facts warrant such a determination.” (Seiser & Kumli, Cal. Juvenile Courts Practice and Procedure (2014) § 2.151[5], p. 2-485, citing *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 703-711.)

We review the juvenile court’s detriment finding for substantial evidence. (*Yvonne W.*, *supra*, 165 Cal.App.4th at pp. 1400-1401.) “We do not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. Rather, we draw all reasonable inferences in support of the findings, consider the record most favorably to the juvenile court’s order, and affirm the order if supported by substantial evidence even if other evidence supports a contrary conclusion.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) On appeal, the parent has the burden of showing that there is no evidence of a sufficiently substantial nature to support the court’s findings. (*Ibid.*)

Substantial evidence supports the juvenile court’s detriment finding in this case. Even after 24 months of reunification, mother was unable to maintain stable housing for a long enough period to support liberal or extended visitation. As such, the minors were never able to participate in more than short unsupervised visits with mother, and mother was never able to demonstrate she had the ability to provide safely for their needs. In addition, mother had not complied with the rules of visitation, she had visitation in her

home that was not cleared by the department, and she returned the children late to their placement and allowed father to have unsupervised visits with them, even though he was not supposed to have visitation with them. And mother had still not completed her batterer's treatment course. Mother's abuse of the children was one of the major reasons for removal of the children from mother's home in the first instance.

The issue on appeal is not whether there is some evidence that would support mother's position, but rather whether substantial evidence supports the juvenile court's finding. There is substantial evidence supporting the juvenile court's conclusion that mother did not make substantive progress with her case plan and that L.P. and M.P.'s return to mother created a substantial risk of detriment to their safety, protection, or physical or emotional well-being.

DISPOSITION

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