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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re M.P., a Person Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. T.T., Defendant and Appellant.	F077790 (Super. Ct. No. 07CEJ300157-4) **OPINION**

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Brian M. Arax, Judge.

Gino de Solenni, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Franson, Acting P.J., Peña, J. and DeSantos, J.

T.T. (mother) appeals from the juvenile court's order terminating her reunification services at a contested six- and 12-month review hearing in July 2018 as to her then four-year-old daughter, M.P. Mother contends the juvenile court erred in finding she was provided reasonable reunification services. We affirm.

PROCEDURAL AND FACTUAL BACKGROUND

Dependency proceedings were initiated in March 2017 after M.P.'s babysitter contacted law enforcement to report possible physical abuse. Then three-year-old M.P. had a black eye, scratches all over her back and stomach, a bruise on her forehead, and a bald spot behind her ear and behind her head at the nape of her neck as if someone pulled her hair out. Her father, Phillip,[1] had sole legal and physical custody and there was concern because his live-in girlfriend allegedly had a history of child endangerment and expressed strong dislike for M.P. The police officer placed a protective hold on M.P. and notified the Fresno County Department of Social Services (department).

Mother had a history with child protective services. In 2007, three of her children were removed from her after she tried to hit their father with her automobile. She was provided services and completed a domestic violence course in April 2008. In September 2008, the juvenile court terminated services and placed the children in a legal guardianship. In August 2013, mother was convicted of a misdemeanor charge of willful cruelty to a child. In November 2013, she gave birth to M.P. and in August 2014 and September 2015, she was arrested for domestic violence. In June 2016, the family court awarded Phillip sole legal and physical custody of M.P. In October 2016, mother gave birth to a daughter, A.T., and tested positive for marijuana. She tested positive for methamphetamine twice the month before.

A social worker met with mother at her home the day after M.P. was removed. Mother's house was clean, there was adequate food, and A.T. showed no signs of abuse

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[1] Phillip is not a party to the appeal.

or neglect. Mother asked if she could have custody of M.P. She did not believe she needed reunification services, claiming she had no history of drug use and already completed parenting classes and a domestic violence program.

Phillip denied anyone physically abused M.P. He attributed her black eye to her fitful sleeping and the metal-framed bed she slept in at his girlfriend's house. He believed she slid down the bed and hit her face on a metal piece that was protruding. As for the scratches, he believed she was injured while playing with his girlfriend's children and the missing hair was caused by mother giving her a permanent before the age of two.

On March 30, 2017, social workers met with the parents and explained the department could not return M.P. to Phillip because there were too many unanswered questions about her injuries, or to mother because Phillip had sole custody. Mother told the social workers she would not participate in services because she was the nonoffending parent and she jumped through all the "hoops" for the department, referring to the previous dependency case. She also refused to drug test for the same reason.

The department placed M.P. in foster care and filed a dependency petition, alleging she suffered serious physical harm and severe physical abuse under section 300, subdivisions (a) and (e), respectively, while in Phillip's care.

On April 4, 2017, the juvenile court detained M.P. and ordered the department to offer mother and Phillip parenting classes, a mental health assessment, and reasonable supervised visitation. Prior to the hearing, the department submitted referrals for parenting and mental health services. The day before the hearing, a social worker gave mother a letter advising her that someone would contact her to set up appointments. The letter contained the name and telephone number of someone she could contact if she had any questions about the parenting class. It also advised her to contact her social worker if she had questions about her mental health assessment. Mother declined a parenting class, stating she completed one and received a certificate. On April 18, mother was referred to Quality Supervised Visitation Center (QSVC) for therapeutically supervised visits.

In June 2017, following a contested jurisdictional hearing, the juvenile court sustained a first amended petition filed in open court and adjudged M.P. a dependent child under Welfare and Institutions Code, section 300, subdivision (b)(1)[2] (failure to protect). Mother's attorney filed a trial brief, asking the court to place M.P. with mother.

The department recommended the juvenile court deny mother's request for placement and initially recommended it deny both parents reunification services at the dispositional hearing. The department reported that mother refused its offers for services, insisting she did not need them. In addition, she was aggressive with care providers and, at times, her behavior was unusual, and her speech was slurred. She threatened a supervisor at the department and conspired with someone to impersonate her and provide a hair follicle for drug testing. In August 2017, QSVC dropped mother as a client because she was disruptive and refused to listen to the therapist. The department referred her to Comprehensive Youth Services (CYS), another provider of therapeutic visitation. The department reported that Phillip, in contrast, was cooperative. Consequently, the department filed an addendum report and recommended the court order services for him. The department attached a case plan that identified the service objectives and requirements for Phillip only.

The juvenile court conducted the dispositional hearing in November 2017. Mother testified she completed all the services in the last few years that were required of her in 2007 and was successfully parenting A.T.

The juvenile court denied mother's request for placement, citing her ongoing acts of aggression toward service providers, conviction for child cruelty, arrests for domestic violence, and possible drug use. The court removed M.P. from Phillip, ordered reunification services for both parents and found the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) did not apply. The court ordered the parents to participate in

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[2] All statutory references are to the Welfare and Institutions Code.

parenting, domestic violence, substance abuse and mental health services, and submit to random drug testing. The court ordered reasonable supervised visitation and set a postdisposition mediation for January 2018, and a combined six- and 12-month review hearing for April 2018 (combined hearing).[3]

Social workers met with mother and Phillip on January 23, 2018, for the postdisposition mediation and reviewed their services plans and visitation. Earlier in the month, CYS terminated mother's visitation service because she missed three consecutive visits in December 2017. Prior to that, she was scheduled for a parenting class but was dropped for not attending. On the day of mediation, the department mailed her a service letter informing her she was referred to another parenting class. Mother also received multiple referrals for a mental health assessment and random drug testing. She declined mental health services, stating she did not need them and did not go to the testing facility. She was scheduled for a substance abuse assessment on December 20, 2017, and a domestic violence assessment on January 2, 2018, but did not attend. The mediation report detailed the department's efforts to arrange services for mother. According to the report, she had pending appointments for substance abuse and domestic violence assessments and stated she could contact a specific provider for a mental health assessment.

On January 23, 2018, the juvenile court adopted the mediation results and the parents' agreement to the services at a hearing, attended by both parents. Mother's attorney submitted on the results of the mediation.

In February 2018, mother attended her first parenting class, arriving an hour and a half late. She was reportedly very defensive and argumentative and informed the staff that she had taken the class three times and did not need it. She stated in a loud voice she

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[3] Mother appealed, arguing the juvenile court failed to comply with the ICWA notice requirements. We affirmed. (*In re M.P*. (Aug. 2, 2018, No. F076650 [nonpub.opn.].) The court takes judicial notice of the record in case No. F076650.

was not the offending parent, Phillip was. She continued to attend but was late and disruptive. In April, mother completed a mental health assessment but declined mental health services. The social worker who assessed her believed she could benefit from individual therapy and a psychological evaluation.

In its report for the combined hearing, the department recommended the juvenile court terminate mother's reunification services because she was not participating in her court-ordered services or regularly visiting M.P. CYS removed her from their schedule a second time in January 2018 because of her disruptive behavior and lack of progress. The department referred her to CYS and QSVC but only CYS was willing to take her as a client on the condition she agree to certain stipulations. However, mother would not accept the stipulations and was angry and threatening with the staff. Phillip, meanwhile, was making moderate progress in his services plan and maintaining a somewhat regular visitation schedule. Consequently, the department recommended the court continue his services to the 18-month review hearing.

The juvenile court set the matter for a contested hearing on the department's request to terminate mother's reunification services. In a pretrial statement of contested issues, mother asserted the department gave her an inadequate service plan, inconsistent information about available services, and untimely referrals. Her visitation with M.P. had been restricted and she received little to no communication from the department. She requested the court grant her an additional six months of reunification services with an adequate case plan.

A contested hearing was conducted in July 2018. Mother testified and correctly identified the components of her case plan. She was never provided a case plan by her social worker and only knew what services to complete because of the court's order. However, she acknowledged receiving a referral for a parenting class, which she completed online the week before the hearing. She received information about drug testing by email and went to the testing facility. She was unable to test, however,

because the testing agency did not have her information. She made no further attempts to drug test. She completed a mental health assessment, though she did not know if she received a referral. She did not pursue mental health services because she did not need them. The department did not provide her a referral for a domestic violence assessment and the social workers did not return her calls when she tried to inquire about it. Through her attorney, however, she was able to obtain the information she needed and tried contacting the assessment facility without success. Had the department provided her referrals for the services, she would have used them.

The juvenile court concluded mother received reasonable reunification services, acknowledging that the department did not provide her a written case plan, but finding she was aware of what was required of her and participated in discussions about her services at the postdisposition mediation. The court did not believe "services efforts [were] likely to be met with success no matter what was done by the [d]epartment in light of mother's history and attitude." The court adopted the department's recommendations and continued Phillip's reunification services to the 18-month review hearing.

DISCUSSION

Mother asserts the juvenile court failed to order reasonable services, citing the lack of a formal case plan. We concur the court violated the statute requiring a written case plan, but conclude mother failed to show prejudice.

The department is required to complete a written case plan within a maximum of 60 days of the initial removal of the child or by the dispositional hearing, whichever occurs first. (§§ 16501.1, subd. (e), 358, subd. (b)(1).) The requirements for a specific written case plan are set forth in section 16501.1, subdivision (g). The purpose of the portion of the written case plan that deals with reunification services is to put the family on notice of what must be accomplished to reunify the family. (*In re John B.* (1984) 159 Cal.App.3d 268, 274.)

Here, the department attached a case plan to its dispositional report that only included reunification services for Phillip. Consequently, as to mother, it violated the statutory requirement that the department provide mother a case plan informing her in writing of what she had to accomplish to reunify with M.P. To prevail on appeal, however, mother must show prejudice from the statutory violation. (*In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1419 [parent must show prejudice from failure to comply with notice requirements of § 366.21].)

Mother contends the lack of a written case plan prejudiced her because it forced her to identify and contact service providers. The evidence, however, is overwhelmingly to the contrary. From the inception of the case, mother was provided referrals to specific service providers. For some services, she was given multiple referrals. In addition, mother participated in a mediation where the specifics of her services requirements were discussed. She also completed parenting, partially completed the mental health component by participating in a mental health assessment, and made initial contact but did not follow through with drug testing and domestic violence services. To claim she did not know how to access her services is wholly unsupported by the evidence.

Mother also contends the department unreasonably restricted her visitation by limiting her to therapeutic supervised visitation without a court order and failing to consider other modes of contact, such as telephone calls or Skype visits. We conclude the department's efforts to facilitate visitation were reasonable. The juvenile court ordered supervised visitation in April 2017 at the detention hearing and the department complied. However, reports about the quality of mother's visits and her significant criminal history caused the department concern. Consequently, the department referred her for therapeutic supervised visitation early on, which it had the discretion to do. As it turned out, the department's decision was prudent given mother's subsequent behavior. Mother thereafter refused to cooperate with the therapist and staff to the point that only one service provider was willing to supervise her visits and only if she agreed to abide by

certain conditions. She also refused the conditions. As a result, she never advanced beyond therapeutic supervised visits and deprived herself the opportunity to visit her child. If any restrictions were placed on mother, they were self-imposed.

In the end, mother's failure to reunify was not the result of the juvenile court's failure to provide her a written case plan. Rather, it was her steadfast refusal to participate in any services and unwillingness to cooperate with the service providers that prevented her from reunifying.

DISPOSITION

The judgment is affirmed.