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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re T.D. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

DIANE D.,

Defendant and Appellant.

G046009

(Super. Ct. Nos. DP020765 &
DP020766)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Barbara H. Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Jesse McGowan, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minors.

Diane D. (mother) appeals from the juvenile court's six-month review order continuing the out-of-home placement for her two now five-year-old children (child 1 and child 2). She contends the court erred in failing to return the children to her custody. Finding no error, we affirm.

FACTS AND PROCEDURAL BACKGROUND

In January 2011, Orange County Social Services Agency (SSA) filed a failure to protect petition under Welfare and Institutions Code section 300, subdivision (b) (all further statutory references are to this code unless otherwise stated) after mother, a clinical psychologist who worked with nursing homes, made numerous unfounded allegations of molestation against several nannies, a babysitter, and the babysitter's daughter and dog. The petition alleged mother had an undiagnosed mental illness and was unable to control the children, placing them at risk of emotional harm and neglect. It further alleged mother's questioning of one child for three days about alleged sexual abuse placed him at risk. The court detained the children and ordered monitored visitation.

For the jurisdictional and dispositional hearing, SSA recommended sustaining the petition, ordering a psychological evaluation of mother under Evidence Code section 730 (730 evaluation), and continuing the disposition hearing. Mother continued to assert the children were sexually abused and denied she had a mental illness and the allegations of medical neglect. Mother agreed to take parenting classes and the children began therapy. A therapist believed child 1 might have autism and tests indicated he met 8 out of 12 criteria. Child 2 showed no signs of autism but was later preliminarily diagnosed with cerebral dysfunction and was unable to count or identify colors. Neither child was potty trained.

Mother pleaded no contest to an amended petition stating she “may have” an undiagnosed mental condition placing the children at risk under section 300, subdivision (b). The court appointed a psychologist to perform a 730 evaluation and interview the former nannies.

The former nannies denied the sexual abuse allegations, criticized mother’s parenting skills, and reported mother spent only 15 minutes a day with the children. The psychologist found them more credible than mother, who was “difficult . . . to evaluate as she was so guarded and defensive.” He believed mother had “demonstrate[ed] propensities for neglecting her children, as well as subjecting them to emotional abuse. . . . In some of the instances where she suspected abuse, she continued to utilize the same caretaker. . . . [She also] ‘was leading the children and exposing [them] to inappropriate sexual language.’”

The psychologist opined mother suffered from a mental disorder or at least showed symptoms of a delusional disorder for which “treatment is often difficult” and “the prognosis . . . guarded.” He believed the children’s best interest was to “continue in protective custody[,] . . . especially given the degree of neglect . . . they have apparently been subjected to . . . [and] the reported possibility that one of the two boys suffers from autism.” He recommended mother be seen by a psychiatrist for possible antipsychotic medications, “drug testing to rule out any abuse of prescription or non-prescription drugs,” and that she be “seen in individual psychotherapy.”

Based on the psychologist’s recommendations, SSA’s case plan included counseling/mental health services, parenting education, and substance abuse testing. The court adopted the case plan upon the parties’ stipulation.

The children appeared to be thriving in their foster home and were now potty trained. But the foster mother requested their removal after six weeks. Mother had called the Child Abuse Registry after child 2 told her another child had run over his neck with a bicycle and the foster mother tried to explain child 2 had gotten off his bicycle and

ran into another child's bicycle, causing a scratch on his neck that did not require medical treatment. The foster mother felt overwhelmed due to the child abuse complaint and four special incident reports filed by mother. The children were moved to a group home.

In August SSA described mother's progress on her case plan as moderate. She had completed her parenting classes and consistently visited the children, but had trouble disciplining them; they continued to throw tantrums and ignore mother. Mother took four medications, including two for seizures (but often used as mood stabilizers for psychiatric patients) that she said she took for pain, an antidepressant, and a drug for insomnia and racing thoughts. Her therapist reported "mother continues to be in complete denial of her psychiatric disorder which was diagnosed as a delusional disorder . . . in the court ordered psychiatric evaluation." Mother claimed she had "diagnosed" herself as only delusional for a five-month period, including when she was evaluated. She asked for a different therapist because she did not want to be confronted by her current one. The therapist did "not believe . . . mother [was] benefitting from therapy due to [her] state of mind" but might make progress with another therapist and informed SSA her therapy with her would be terminated.

The group home reported the children were "doing quite well" and showed "a marked level of progress . . . compared with their previous stay" from January to April 2011. They had fewer tantrums and showed improved behavior. But the staff "had significant difficulties managing . . . mother." She called the home five or six times a day, criticizing the care the children were receiving. On one visit, mother called 911 believing child 2 "was making some odd bodily movements" and he was taken to the hospital, then released with directions to follow up with a neurologist.

A team decisional meeting was held in mid-September due to the group home's "increasingly difficult time managing . . . mother." At the meeting, mother screamed at someone to "[q]uit smiling at me" and insisted the children had been given psychiatric medications, despite being told they were not. She believed child 1 was

behaving differently, with “down[.]cast eyes[.] turning away when spoken to, odd walking with his hands clenched down on his sides,” none of which were observed by the group home staff. She also believed both children had had brain surgery because they had ““red marks”” on their heads and that child 2 had “endured some kind of head trauma, requiring medical treatment over and above th[at] . . . already determined necessary via examination of the child by a medical doctor.” An electroencephalogram (EEG) showed “no definitive information” but “mother pushed her concerns and agenda so far with the medical staff that [child 2] was eventually hospitalized” before being released “with a clean bill of health.” Nevertheless, mother maintained child 2 suffered from head trauma and his medical records had been altered.

After the meeting, mother sent the social worker a series of text messages, accusing the group home staff of encouraging the children not to speak with her on the telephone, inflicting trauma on them, and advising that child 1 had been diagnosed with ““peri periorbital ecchymosis”” meaning he had a skull fracture requiring a neurologist. A week later, mother reported to police the children were being abused at the group home, with staff members strangling them and watching them have seizures. Upon viewing a video mother claimed showed the children were having seizures, the officer said the children were merely “being silly and having fun.” Asserting everyone thought she had Munchausen Syndrome, mother continued talking about ““hydro-encephalis”” and ““the seizures her boys keep having and how there is a conspiracy”” but the officer responded that nothing she said made sense and she was ““paranoid and delusional and should maybe seek help[.]””] When he refused to allow mother to file a police report against the group home, she threatened to file a complaint against him. Believing mother’s mental health problems placed the SSA staff at risk, the officer suggested a restraining order be obtained.

SSA requested the court find the best interests of the children required any placement at a foster home be confidential due to mother’s “ongoing, intrusive

interactions with the children's caretakers[,] which has already lead to the dissolution of the children's previous foster home placement . . . and continues to threaten . . . [their] current interim placement at [the group home],” where they were doing well.

Around the same time, the children's doctor informed SSA he could no longer treat the children if mother continued going to their appointments. When he told her the children were healthy, she became angry and insisted they suffered from a seizure disorder. She maintained child 2 had “water on his brain or hydroencephalus” and refused to listen to the doctor, threatening to go to the press, as well as ““complain to the medical board and have his license revoked.””

Upon further assessment, one child was diagnosed with mild autism and the other with cerebral dysfunction but more information was needed from individualized educational plan (IEP) assessments in order to make an official diagnosis. When mother asked if the latter could be caused by head injury, the doctor said it would have to be present at birth. Because mother firmly maintained the children were ““normal”” before age three, contrary to the doctor's assessment, and that their problems resulted from “the disruptions they've had,” the doctor stated her diagnoses were no longer valid but encouraged mother to complete the IEP assessments and to return if she had new information.

During a visit at the group home, mother called a child abuse registry social worker to take a report on child 1 due to a bruise under his eye, which he said he got when he tried to get out of a gate during a timeout. She wanted the injury documented, as she had seen many injuries and was concerned her children's needs were not being met. A medical practitioner diagnosed child 1 with a superficial bruise.

Mother's therapist reported although mother “came to understand that her boys were not being sexually abused, she was unable to come to terms with the reason she thought they were being abused.” Mother also “admitted reluctantly that she must have been delusional” but claimed it was only for five months and that she must have

been stressed. The therapist noted mother could not “explain why she was taking drugs for seizures or arthritis when she has neither,” did not know why she was prescribed certain drugs, and “insisted the other medications were non-narcotic and therefore OK.” According to the therapist, mother’s “professional lack of knowledge regarding drugs contradicts her education and profession plus her job requires her to deal with people who are using or prescribed a wide variety of narcotic and non-narcotic drugs.”

At the contested six-month review hearing, mother’s appointed counsel informed the court mother wished to represent herself. The court granted the request but ordered appointed counsel to stand by to assist mother if appropriate. Counsel for SSA submitted on the reports.

Upon cross-examination by mother, the social worker testified she believed mother had been diagnosed with delusional behavior disorder and paranoid tendencies and had a serious substance abuse problem based on information from mother’s therapist but did not consider her to have Munchausen Syndrome. She denied altering medical records or telling doctors how to treat child 2 despite mother’s suggestive questioning. She also testified although both children had fallen off their bikes at some point, neither child sustained injuries requiring an ambulance to rush them to the emergency room.

During direct examination of herself, mother testified she no longer believed the children were sexually abused. She disagreed she had a mental disorder and claimed she had been misdiagnosed, reading a letter from a health care agency stating, “[mother’s] mental health condition does not meet the medical necessity criteria to be eligib[le] for specialty mental health services.” She believed she had a medication interaction rather than a medical disorder.

Mother also denied using illegal drugs, having problems controlling the children’s behavior, making false claims about their illnesses or that child 1 was developmentally delayed. Child 2 showed serious physical symptoms, including facial twitching, seizures, fluttering eyes, and feeling cold and shaky and child 1 “may be worse

off than” child 2, having periorbital ochymosis, i.e., a black eye. Mother stated she attended all parenting classes and visits, stopped working in Los Angeles in order to be closer to the children, and worked with the nannies to potty train them, charting their progress.

On cross-examination, mother admitted she took medication for “every[]day problems” and that within the past month she wrote a blog describing a conspiracy in which the public defender, a judge, a children’s hospital and its affiliate hospital, and SSA all tried to avoid addressing the children’s diagnosed possible traumatic brain injuries by “disguis[ing]” them as autism. She also wrote she believed her cell phone and computer were bugged after the F.B.I. was contacted, and that there were indications of ritual abuse, stem cell research, use of foster children for drug testing and “global human trafficking,” plus cloning and mind control through the implantation of a microchip. Mother testified she did not believe those statements but that her computer had a program called Silver Light, which changed what she saw on the Internet, placed her computer on a network rather than allowing her to be in control, and caused her to view inaccurate information.

The court found although mother had complied with much of what was asked and was not under the influence of any controlled substances, she made only moderate, not substantial, progress in her treatment programs. Despite her ability to function at a high level, “it was clear . . . [she] is still suffering from delusions” and was blind to them. The court was concerned “mother’s continual interference with service providers . . . will result in the[] children not getting the services . . . they really need.” The children’s doctor had already informed SSA he would not treat the children if mother continued to attend medical visits and mother was “very close to disrupting their placement” at the group home. Additionally, mother’s irrational concerns caused them to lose “an excellent foster placement.” The court concluded returning the children to her “would create a substantial risk of detriment to their safety, protection, physical and

emotional well-being,” ordered mother to work with a different therapist, and scheduled a 12-month review hearing.

DISCUSSION

Mother contends the evidence did not show the children would be at risk of detriment if returned to her care. We disagree.

At the six-month review hearing, the court must return the child to the physical custody of his or her parent unless the court finds that doing so “would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child.” (§ 366.21, subd. (e).) We review the court’s detriment finding for substantial evidence (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763), considering “the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court’s order [citation]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1401).

In making its ruling, the court must consider the parent’s progress and her capacity to meet the objectives of the plan, plus whether she has ameliorated the reasons for removing the child. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.) Mother argues that by the six-month review hearing she no longer suffered from delusions the children were sexually abused, the main reason they were detained, and it was not shown her other claims, even if delusional, could actually harm them.

But “the decision whether to return a dependent child to parental custody is not necessarily governed solely by whether the parent has corrected the problem that required court intervention.” (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1344.) Moreover, the court found mother had not made substantial progress in her treatment programs, which constitutes “prima facie evidence that return would be detrimental.” (§ 366.21, subd. (e).) In doing so, the court did not presume harm to the

children based on “whatever mental disorder mother may have had.” Nor did it make its detriment finding “simply because mother’s conduct was disruptive.” Rather, it concluded her blindness to her delusions caused her to act in a manner that prevented the children from receiving necessary services and care.

Acknowledging substantial evidence supports the court’s finding she continued to suffer from delusions, mother nevertheless asserts her “concerns were not entirely baseless.” But we may not reweigh the evidence and must resolve all evidentiary conflicts in favor of the court’s order. (*In re Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1401.)

Mother maintains SSA did not specifically show how the children would be harmed by her “exaggerated, or delusional, concerns over [their] physical safety. . . . At worst, [they] would be subjected to more medical visits than would ordinarily be required. Medical exams, even unnecessary ones, generally do not create a substantial risk of physical harm.” But mother ignores the fact her delusions disrupted the children’s medical care from their doctor. Her insistence the children were ““normal”” before age three and that their problems resulted from “the disruptions they’ve had,” contrary to the doctor’s assessment, also may have prevented them from being treated for possible autism and cerebral dysfunction.

Mother claims that had the children been returned to her, she could have taken them to a different doctor for a second opinion and there is no evidence she would “convince a doctor to go against his or her professional judgment and provide potentially dangerous treatment” But under the facts presented, the court could reasonably determine mother would have had the same reaction with any new doctor, regardless of how many she went to, until she found one who agreed with her.

Mother also asserts she “never doubted the existence of the children’s legitimate medical conditions” and thus “there was little risk . . . those conditions would be ignored.” But the record shows she vehemently disagreed with the doctor’s opinions

whenever they were different from what she believed, which included at one point that a conspiracy existed to disguise the children's diagnosed possible brain injuries as autism. From this evidence the court could have reasonably found mother would ignore medical advice whenever it was contrary to her view.

Mother analogizes this case to *In re Heather P.* (1988) 203 Cal.App.3d 1214, 1229, disapproved of on other grounds in *In re Richard S.* (1991) 54 Cal.3d 857, 866, fn. 5, which reversed an order setting a permanency planning hearing due to insufficient evidence to support a detriment finding. In *Heather P.*, the mother suffered from paranoid schizophrenia, for which she was receiving effective medication management and ongoing therapy, and had a transient lifestyle. The only evidence of detriment to the child was an outdated report from the mother's therapist. By the time of the 12-month review hearing, she had met the elements of her family reunification plan, obtained a stable residence, and was working in a church nursery. Although the mother had substantially complied with her case plan, the social worker opined the child could not be returned to her because she had not received a positive evaluation from her therapist. *Heather P.* concluded the evidence presented was not the type "which could be deemed credible and of solid value and from which the juvenile court could conclude that the child's physical or emotional well-being would be threatened if she were returned at the time of the review hearing" (*Heather P.*, *supra*, 203 Cal.App.3d at pp. 1229-1230.)

Unlike in *Heather P.*, the court here found mother had only moderately complied with her treatment program and the report from her therapist was not outdated, much less the only evidence of detriment to the children. Additionally, mother denied having a mental disorder, claiming she had been misdiagnosed and that she had been delusional for only five months.

Substantial evidence supports the court's finding the children were at substantial risk of suffering serious harm. Given our conclusion, we need not address

mother's remaining claims to the contrary concerning her belief in conspiracies, collusion, and alteration of medical records, or her parenting and disciplinary techniques.

DISPOSITION

The order is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.