

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

S.W.,

Petitioner,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G046496

(Super. Ct. No. DP019689)

O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Petition denied.

Law Offices of Charles Bergstrom and Charles Bergstrom for Petitioner,
S.W.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Aurelio Torre, Deputy County Counsel for Real Party in Interest.

No appearance by the minor.

S.W. (Mother) seeks relief from an order setting a Welfare and Institutions Code Section 366.26¹ hearing to consider a permanent plan for her daughter, Abigail. Mother contends the court erred when it found there was a substantial risk of detriment to Abigail's safety, protection, physical or emotional well-being if returned to Mother. Mother further contends the court erred in finding Mother had been offered or provided reasonable reunification services. We conclude the evidence supports the order and findings. The petition is denied.

FACTS

Mother gave birth to Abigail when she was 13 years old. At that time, Mother was residing at Orangewood Children's Home, having only recently been detained herself based on an allegation of sexual abuse by an unknown perpetrator. A hospital hold was placed on Abigail shortly after her birth, based on a determination that Mother was unable to provide for either herself or Abigail. An emergency social worker who assessed the situation concluded Mother was "not developmentally mature enough to provide for the basic care and control of the newborn child."

Hospital personnel reported to the social worker that Mother had been admitted to the hospital after it was determined she was in labor, but that Mother "did not understand that she was in labor and required [a nurse] to explain the delivery process using a scaled back vocabulary that she determined to be on a nine year old level of communication." Mother also informed the nurse she did not know how she had become pregnant. Another nurse reported that Mother had "demonstrated during conversations to have an immature understanding of motherhood and does not understand the basic care and needs of a newborn child."

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

On April 20, 2010, SSA filed a petition alleging Abigail falls under the jurisdiction of the juvenile court based on section 300, subdivisions (b) [failure to protect] and (g) [no provision for support.] Abigail was ordered detained, and Mother was given supervised visitation, including “daily visitation while at Orangewood Children’s Home and upon release, a minimum of six (6) hours per week”

A jurisdictional and dispositional hearing was set for May 6, 2010. In connection with that hearing, SSA reported that it appeared Abigail’s alleged father was Mother’s brother, Jared W. It was further reported that Mother and Jared had been home schooled for most of their lives, and at the time Mother was detained, they had been living in a single motel room with their parents, and sharing one of two queen-size beds.

SSA also reported there were concerns about Mother’s ability to care for Abigail. Specifically, it was reported that Mother “lacks focus and bonding with the baby, so much so that the staff . . . do not feel safe to allow [Mother] to walk and hold the baby at the same time.” Mother was instructed on how to hold Abigail, but was apparently “unable to retain the information.” Mother was also observed to “lose focus” while breast feeding Abigail, causing Abigail to “drop down on the support pillow placed around [Mother’s] waist area.” In one instance, Mother lost focus while breast feeding and dropped Abigail all the way to the floor, without making any effort to catch her. After that, “it was determined that staff must keep complete control of the child at all times.”

Although Mother expressed an interest in keeping Abigail with her, SSA decided that in light of Mother’s inability to care for Abigail, even under close supervision, it would be best to place them in separate foster homes. When Mother was informed of this, and told the two of them would have weekly contact with each other, she reacted calmly and did not express any concerns. On May 20, 2010, Abigail was moved from Orangewood, where Mother continued to reside, to a foster home.

The jurisdictional and disposition hearing was continued, and after receiving the results of a paternity test, SSA filed an amended jurisdictional petition in June of 2010, formally alleging that Abigail's father was Mother's brother, Jared. In July of 2010, an MRI revealed that Abigail had brain abnormalities including absence and malformation of the nerves that connect the two brain hemispheres – a diagnosis that is often associated with other physical medical or genetic conditions.

The jurisdictional and dispositional hearing took place on July 27, 2010, at which time the court made a finding that Jared was Abigail's father, and both Mother and Jared submitted to an adjudication of jurisdiction based on the allegations of the first amended petition. The court then sustained the petition, vested custody of Abigail in SSA, and ordered reunification services for Mother only.

During the first six-month reunification period, Mother made slight improvements in her ability to provide care for Abigail, but still needed constant supervision when she spent time with Abigail. Mother rarely asked about Abigail when they were not together. In early October of 2010, Mother was enrolled in an in-home parenting program, to provide her with instruction on bonding and basic child care. She was reported by the instructor as appearing awkward and uncomfortable holding Abigail at the initial session, but also as demonstrating resilience and good coping skills.

In early November of 2011, Mother was placed in her aunt's custody in San Bernardino, which made it impossible to continue the in-home parenting instruction. However, Mother did participate in counseling, and her therapist reported that she remained resistant to discussing any issues of sexual abuse, and maintained she did not know how she got pregnant. Mother began parenting classes in San Bernardino in February of 2011, and was reported to be showing improvement in her parenting skills. However, Mother still needed guidance and supervision while performing basic tasks, and still exhibited a tendency to lose focus.

By March of 2011, Mother was attending parenting classes, therapy and had been approved to receive some one-on-one coaching in parenting skills. The instructor in charge of Mother's parenting class expressed the opinion that the ideal situation for Mother and Abigail would be to place them together with a responsible adult to care for both of them.

After some delay, the court conducted a six-month review hearing on April 19 and 20, 2011. At that hearing, SSA recommended the Mother be afforded additional reunification services, through June of 2011, to give her a full 12-month reunification period. However, counsel for Abigail argued that reunification services should be terminated immediately, because she saw no possibility that Mother might be in a position to assume care and custody of Abigail only 8-weeks hence.

Mother's counsel acknowledged Mother was "not ready to care for [Abigail] on her own," but asserted that since Mother had been complying with her case plan to the best of her ability, the court was required to provide more services to her "up to the 12-month review, which has not come yet." Counsel claimed "[i]t's not the proper time to evaluate whether [Abigail] can be returned to the mother while the Mother lives in the home of the maternal . . . aunt."

Mother's counsel then took the position that reasonable services had not been offered to her during the reunification period, due in part to Mother's move to her aunt's home, which significantly interrupted the provision of her services. However, the court rejected that argument. Instead, the court found that reasonable services had been offered to Mother, and that the return of Abigail to her custody would still create a substantial risk of physical or emotional harm. Consistent with SSA's recommendation and Mother's request, the court ordered additional reunification services for Mother, and continued the case to June 16, 2011, for a 12-month permanency review. Mother did not challenge that order.

In June of 2011, it was reported that while Mother continued to express confusion about the sexual abuse she suffered, she was showing some progress in her parenting skills. She demonstrated a grasp of the general concepts, participated fully in her parenting course and demonstrated eagerness. The program's director stated the belief Mother could be reunified with Abigail with sufficient supervision and encouragement. However, at a team decision making meeting held in mid-June, Mother's aunt, with whom she continued to reside, informed SSA that she and her husband were struggling to provide for Mother's needs, and would not be able to care for both Mother and Abigail.

The 12-month permanency review hearing was also continued, and in July of 2011, the court ordered that the 12-month review hearing for both Mother and Abigail would be held on August 29, 2011. Then, in mid-August, Mother was returned to her parents' custody for a 60-day trial period.

In connection with the 12-month review hearing for Abigail, SSA recommended that reunification services be terminated for Mother. In SSA's report, the social worker explained that despite her 12 months of reunifications services, and some improvement in her parenting skills, Mother remained incapable of providing adequate care for Abigail. The social worker noted continuing concerns about Mother's parenting skills, as well as her ability to connect with Abigail and respond to her needs.

Moreover, the social worker explained that Mother appeared unwilling to accept that Abigail has special medical needs, stating that when the issue was raised, Mother denied any knowledge of what special medical needs Abigail might have. Both of Mother's parents had reacted harshly and negatively to the idea that Abigail had special medical needs. The social worker was consequently concerned that Mother's parents would not be able or willing to help Mother meet Abigail's needs.

However, despite SSA's recommendation to terminate services, all parties stipulated to an additional period of reunification services at the 12-month review

hearing. Specifically, the parties agreed that continued supervision was necessary; that Abigail could not be safely returned to Mother's custody; that reasonable services had been provided and Mother had made "moderate progress" toward alleviating the causes necessitating placement; and that the appropriate plan was to continue reunification with the goal of returning Abigail to Mother's custody within 18 months of her initial removal. Based on that stipulation, the court ordered an additional period of reunification services, identifying October 17, 2011 as the "likely date" by which the goal of reunification would be achieved. The court set the 18-month review hearing for that date.

In September of 2011, Mother was receiving three supervised visits with Abigail per week, adding up to a total of eight hours. Although Mother was affectionate with Abigail, she was still unable to maintain her focus on Abigail's needs and had to be reminded to hold her properly and keep her from falling. The social worker observed Mother did not encourage or stimulate Abigail as a parent would be expected to do, and she had concerns about Mother's immaturity and the apparent inability of Mother's parents to provide meaningful assistance if Abigail were placed in Mother's care.

By mid-October, it was reported that Abigail displayed no behavioral problems and seemed well-adjusted, but was experiencing developmental delays and complications relating to her brain abnormalities. Mother, however, continued to deny that Abigail had any problems, and was still having difficulty grasping basic parenting skills. For example, during one visit, Mother twice left Abigail unsupervised on top of a changing table.

In late October of 2011, Mother's individual therapist reported that she had attended individual counseling as well as conjoint counseling with her own mother, and observed Mother appeared "very juvenile" and might need evaluation for special education services. However, Mother was finally able to admit her brother raped her.

Mother's trial visit with her parents was terminated in late October of 2011, when it was discovered that her parents had allowed her brother Jared to return to the

family home, despite having been warned he was not allowed to have any contact with Mother. Mother was returned to Orangewood, and continued to receive group therapy and some individual therapy. Mother also continued to have monitored visitation with Abigail at Orangewood for about five hours per week, but did not always pay close attention to her. It was reported that during one visit, Mother was watching television rather than Abigail, and did not notice that Abigail had put an object in her mouth.

Mother expressed the belief she could care for Abigail while attending high school, without the aid of her parents, so long as she was able to make sure there were “people around [her] who know how to take care of kids, because nobody can do it alone.” She denied she would need any assistance from the teen parenting program at the local continuation high school, which contributed to the social worker’s belief that Mother did not have “a realistic or mature understanding of what the care and custody of a child, and especially a child with special medical needs, would require, and is unprepared to care for the child.”

In January of 2012, reunification services for Mother’s own parents were terminated. Mother’s therapist informed the social worker it was very important for Mother to have more individual therapy, and expressed the opinion that Mother had been “deprived” of sufficient individual counseling throughout the dependency process.

Throughout this period, Abigail remained in the same foster home where she had been placed in May of 2010, and she appeared happy and comfortable there. Her foster parents expressed interest in adopting her.

The 18-month review hearing was continued several times, and finally took place in February of 2012 – four months after the date initially anticipated. Mother’s counsel argued that reasonable services had not been offered to her, largely because Abigail had not been placed in the same home with her “either in a foster home or one of the excellent facilities that take in both mothers and minors.” Counsel maintained that placing Abigail in a separate home from Mother was “just a big banner of doom from the

get-go,” because there was no way Mother would ever learn how to be a parent with only monitored visitation. As counsel explained it: “you need . . . that repetitive, everyday, day-to-day taking care of a child and watching other people do it and getting used to how it’s done, that would have been, I think, her only chance. [¶] And so therefore, I don’t think, for example, that during the last six months the services have been reasonable because they haven’t been those services.”

Based on that argument, what Mother’s counsel asked the court to do was “make an order for six more months of service and order that the minor and mother be placed together in one placement.”

Mother’s counsel also asserted that Mother’s therapy had been inconsistent, and her visitation schedule reduced, during the last six-month review period, both of which were issues that would be “resolved I think if – if Abigail were placed with [Mother.]”

The court denied Mother’s request for an additional period of reunification services. Instead, the court found that the reunification services offered to Mother had been reasonable. Just as the parties had stipulated at the end of the prior reunification period, the court found that Mother had made only “moderate” progress toward alleviating or mitigating the factors that caused Abigail to be placed under the jurisdiction of the juvenile court, and concluded that placing Abigail in Mother’s custody would put Abigail at substantial risk of detriment to her physical and emotional well-being. The court specifically noted that no party had taken the position that Mother was able to assume custody of Abigail and provide her with appropriate care. Based on those determinations, the court ordered that Mother’s reunification services be terminated, and scheduled the case for a permanency planning hearing pursuant to section 366.26.

DISCUSSION

Mother’s first assertion is there was no substantial evidence to support the court’s conclusion that Abigail could not be safely returned to her custody at the

18-month review hearing. When a party challenges the sufficiency of the evidence to support an order, we are obligated to uphold the challenged order if, “after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is substantial evidence to support the findings.” (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1378.)

In this case, as SSA points out, Mother never contended she was prepared to assume custody of Abigail herself, nor did she actually request the juvenile court return Abigail to her. Instead, what Mother argued was that she should be provided with an additional period of *reunification services*, during which she and Abigail would be placed in the same home, and she could more effectively concentrate on learning to assume the role of a full-time mother. Technically, she does not renew that argument here, perhaps because she realizes there is no provision which would allow the court to extend reunification services beyond the 18-month period already provided to her.

Section 361.5, subdivision (a)(3), specifies the general rule that “court-ordered services may be extended up to a maximum time period *not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian.*” (Italics added.) Subdivision (a)(4) of section 361.5 does allow an additional extension of services, not to exceed 24 months after the date the child was originally removed from custody, but *only* in cases where the parent has been making significant progress in a court-ordered residential substance abuse treatment program, or has recently been discharged from incarceration or institutionalization. (Section 361.5, subd. (a)(4); see section 366.22, subd. (b).) This case does not present those circumstances, and thus there was no basis upon which the court could actually extend Mother’s reunification services past the 18-month point.

Mother does not renew her plea for an additional extension of services for a period during which she and Abigail would live in the same home, but Mother now contends Abigail could be safely returned to her care as long as SSA fulfilled *its*

obligation to provide her with “an appropriate placement” where the two of them could live together. But while Mother implies that this would involve little more than SSA providing suitable housing to accommodate her desire to provide care for Abigail, the reality of what she seeks is something quite different. For as Mother herself acknowledges, she is “not ask[ing] the juvenile court to place [Abigail] in her care and terminate jurisdiction.”

Indeed, Mother makes no claim that she is prepared to assume primary responsibility for Abigail’s care and custody, and the evidence before the juvenile court was more than sufficient to support the conclusion she is not. While it may be true that Mother had made admirable efforts to participate in services, and had improved her parenting skills from the early days when she could not be trusted to breastfeed Abigail without dropping her on the ground, the evidence demonstrated that at 15 years of age – which is significantly older than the age at which many teenagers begin babysitting – she had not yet shown she could be trusted to provide basic care for Abigail for even relatively brief periods. Specifically, Mother exhibited problems maintaining focus on Abigail’s needs during their visitation, and still had to be reminded to hold Abigail properly to keep her from falling. Moreover, Mother’s refusal to acknowledge that Abigail’s brain abnormalities meant that she had special medical needs, certainly suggested that Mother was not in a position to ensure Abigail received the special care her condition warranted.

So rather than claiming she is actually prepared to care for Abigail herself, Mother is arguing she has a right to have Abigail placed in the same foster care situation where she resides, so that she could provide Abigail’s necessary care with “continued help from the court and [SSA].” What Mother fails to acknowledge is the significant degree of “help” she would require. As of the 18-month review, Mother had not graduated to *unmonitored* visitation with Abigail. In other words, there had not yet been a single hour in which Mother had provided care for Abigail without an adult present to

supervise her and ensure Abigail's safety. As a consequence, there is no basis to conclude Mother herself was in a position to assume the role of Abigail's primary caregiver, even with "help." Instead, what Mother would need is for Abigail to be placed *in the custody* of whomever is exercising custody of Mother herself, so the two of them can be together. Clearly, it is that third party custodian, rather than Mother, who would have primary responsibility for Abigail's care.

We are aware of no provision in dependency law for such a disposition, and Mother does not suggest one exists. We note that what she seeks bears some resemblance to the extended reunification period she asked for at the 18-month review hearing, which as we have already explained, she is not entitled to.

The arrangement Mother seeks closely resembles an order placing Abigail in long-term foster care. In effect, she is asking that Abigail simply be placed *with her* in whatever "suitable home" SSA is obligated to provide, until Mother reaches age 18. But if long-term foster care is the appropriate disposition for Abigail, that is an option that must be addressed in the context of a section 366.26 hearing. (Section 366.26, subd. (b)(6).)

Because there was substantial evidence that Mother herself was not in a position to provide adequate primary care for Abigail, the court did not err in concluding Abigail could not be safely returned to Mother's custody.

Mother's second challenge is to the court's finding reasonable services had been offered to her. However, Mother has waived any challenge to the sufficiency or reasonableness of the services offered to her prior to her 12-month review hearing in August of 2011. The court issued orders in connection with both Mother's six-month review hearing and the 12-month review hearing, and each of those orders included a formal finding reasonable services had been offered to Mother up to that point. Mother challenged neither of those orders following their issuance, and thus has waived any argument on appeal with respect to the court's determination the services offered to that

point were reasonable. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1156-1157; *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705.)

Thus, the only challenge to the sufficiency or reasonableness of the services offered to her that Mother has not previously waived, is the specific contention that the services provided to her during her final six-month reunification period were unreasonable. However, as explained by this court in *Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, because Mother was ultimately afforded in excess of 18 months of reunification services, and was still unable to assume custody of Abigail at the conclusion of that period, the court was required to set a section 366.26 hearing at the end of the 18-month period, without regard to whether the services provided to Mother in the final six-month period were deemed reasonable.

In any event, we do not agree with Mother's contention she did not receive reasonable services during her final period of reunification. "The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547. The only specific complaint Mother makes about the services provided to her during the final reunification period is that she did not receive sufficient individual counseling, as a result of her having been re-detained at Orangewood after the trial visit with her parents was abruptly terminated. She points out it "wasn't [her] fault she was re-detained."

But "fault" is not the issue. The need to re-detain Mother was simply a circumstance that affected her schedule for a short period of time. In an ideal world, it would not have happened, but it falls far short of providing a justification for providing Mother relief in this case.

DISPOSITION

The petition is denied.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

MOORE, J.