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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re K.E. et al., Persons Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

N.C.,

Defendant and Appellant.

G048797

(Super. Ct. Nos. DP023755,
DP023756, DP023757)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed.

Diana W. Prince, 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.

* * *

N.C. is the mother of now six-year-old Joseph, four-year-old Jacob, and two-year-old K.E. Mother appeals from the court's order denying her reunification services. In denying mother services, the court relied on the exceptions contained in Welfare and Institutions Code section 361.5, subdivisions (b)(10) (parent's failure to reunify with minor's sibling), (b)(11) (termination of parental rights over minor's sibling), and subdivision (b)(12) (parent convicted of violent felony).¹ Mother contends (1) the court erred in finding she made no reasonable effort to ameliorate the problems that led to the removal and subsequent adoption of the children's older half brother, and (2) the court erred by determining that providing her reunification services was not in the children's best interest. We affirm.

FACTS

In May 2013, Orange County Social Services Agency (SSA) filed a dependency petition with respect to Joseph, Jacob, and K.E. pursuant to section 300, subdivision (b) (failure to protect), and section 300, subdivision (j) (abuse of sibling) (We refer to Joseph, Jacob, and K.E. collectively in this opinion as "the children"; the defined term does not include their maternal half brother, I.C.)

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

SSA recommended that reunification services be provided to father, but not to mother, and reported the following as to mother. When mother was 15 years old, she had a son, I.C. In 1999, I.C. was declared a dependent child because mother had a substance abuse problem dating back to 1995 (including methamphetamine and alcohol use), she had used drugs while pregnant with I.C., she had not provided care for him since January 1998, and she had left him in the care of his maternal grandparents. Mother was offered reunification services but failed to reunify with I.C., and her parental rights were terminated in December 2000. The maternal grandparents adopted I.C. He is the children's half sibling and is now 17 years old.

In 1999, mother bore a stillborn baby while she was under the influence of drugs.

Mother gave birth to Joseph while incarcerated. She served eight years in prison. Her criminal history includes many arrests and convictions, including robbery.

Jacob is autistic. In November 2012, Jacob was found unattended in the middle of a street. At the time, mother reported that, years ago, she had used methamphetamine, and that for over a year and a half she had abused Vicodin because she had severe ear pain due to surgery. A child abuse report was substantiated against the parents for general neglect.

In February 2013, mother stated she had used drugs ("everything") in the past, but had been sober for two and a half years, although during a short relapse she had used prescription pills and some "street stuff" for about a week.

Because the family was unable to qualify for housing, they were forced to live with the maternal grandparents. In April 2013, the maternal grandparents threw mother out of their home. The maternal grandfather requested a domestic violence restraining order. Police radio logs showed the police had been asked to respond to the residence many times for family disturbances.

Father took the children after finding mother possessed drug paraphernalia, but several days later, mother and father reunited.

On May 2, 2013, the parents argued as they moved out of a motel. In Joseph's presence, mother threw a crock pot and milk at father and punched father. Father panicked and left with Joseph. He dropped Joseph off at a great maternal aunt's home. Mother called the maternal grandfather and said the maternal grandmother had better pick up the children because mother "might end up in jail for killing the father for taking her car and her phone." Mother later came to the maternal grandparents' home and dropped off Jacob and K.E., with their bags, on the lawn. The children were dirty and barefoot. The maternal grandparents picked up Joseph from the great maternal aunt. Father "dumped" mother's car somewhere.

On May 3, 2013, the maternal grandmother phoned mother and told her to pick up the children and that SSA was going to get involved. The maternal grandmother also said she would call the police to evaluate mother, before releasing the children to her, if mother looked high. "[M]other flipped out" and said if the children ended up in Orangewood Family Center (Orangewood), mother would "come after" the maternal grandparents. The maternal grandmother and great aunt picked up mother's car and brought it to mother at a motel. Mother did not answer when the maternal grandmother knocked on the door of her room because an unknown male was with mother. When mother came out, she would not give the maternal grandmother the children's car seats or their shoes, even though a relative had previously given mother a whole bag of shoes for the children. Mother looked like she was high or wanting to get high.

On May 4, 2013, the maternal grandmother told SSA she could no longer care for the children and that she was afraid of mother. Mother did not pick up the children at the maternal grandmother's house. SSA and the maternal grandparents transported the children to Orangewood. Earlier that day, mother had gone to

Orangewood, but she had left without giving the Orangewood staff her contact information.

Joseph told SSA that when his parents are mad at each other, they “throw stuff.”

On May 5, 2013, mother told SSA she was living in her car until she could find a shelter. She claimed that a couple of family shelters would not accept the family because of Jacob’s special needs. Jacob had an upcoming neurology appointment to see if he has seizures. Jacob has to be fed through a syringe. He only drinks milk and orange juice and will only eat Captain Crunch Cereal. Mother said her family accuses her of being on drugs and that the maternal grandfather confiscates her Oxycontin. Mother said she rarely takes Oxycontin. She said she takes prescription medication — Norco, Soma, and Percocet. She last used methamphetamine in 2007 or 2008. She said she has an “over dramatic temper” and a violent past. She said the maternal grandfather “drinks a lot” and becomes violent. Mother thinks he is in trouble with the Internal Revenue Service. Mother said Jacob is “worth a lot of money and the maternal grandfather claimed Jacob on his taxes and is in trouble now for doing so.”

On May 5, 2013, SSA also interviewed father by telephone. Father reported he was currently on a bus headed for the state of Washington. The maternal grandparents had suggested that father move to Washington to stay with the paternal grandfather and get back on his feet. Father said mother takes prescription medicine because of a car accident.

SSA had concerns about mother’s mental health and ability to properly care for and protect the children.

On May 6, 2013, Jacob’s teacher described him as having severe autistic behaviors and being very aggressive. He needs behavior modification and a structured program. Jacob started the school week on Mondays being very aggressive, but after several days at school would noticeably improve; however, after the weekend, the cycle

would repeat. One day no one picked up Jacob from school so the teacher had to transport Jacob to meet mother halfway. The prior week, mother told the teacher that father threw Jacob through a window causing cuts to Jacob's feet.

Mother described to SSA the circumstances behind the incident. She and father had argued about father not getting the children milk and orange juice. Meanwhile, Jacob was crawling on an air conditioning unit outside the family's motel room. Father became frustrated and threw Jacob through an open window. Jacob hit his foot and back. Mother described father as being aggressive and said he has left the family many times during their relationship.

K.E. is possibly autistic and is on a waiting list to receive services.

Mother visited the children frequently. But in July 2013, her visitation was changed from supervised to monitored, and was at one point suspended, because mother insisted on visiting without proper notice, accused female staff of having a relationship with father, threatened the staff, and seemed erratic and incoherent.

Mother told SSA she was in Washington with father.

On July 17, 2013, the court declared the children wards of the court. Pursuant to section 361.5, subdivisions (b)(10), (b)(11), (b)(12), and (c), the court denied mother reunification services.

DISCUSSION

Section 361.5 governs the provision of family reunification services in dependency cases. Under subdivision (a) of that section, whenever a child is removed from a parent's custody, the court must order SSA to provide services to the child and to the parent for a statutorily specified time period. "This requirement implements the law's strong preference for maintaining the family relationship if at all possible." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474.)

Substantial Evidence Supports the Court's Denial of Reunification Services to Mother Pursuant to Section 361.5, Subdivision (b)(12)

Subdivision (b) of section 361.5 contains 16 exceptions which permit a court to deny reunification services to a parent. These exceptions “have been referred to as reunification ‘bypass’ provisions.” (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 845.) If any exception applies, the court may deny reunification services to a parent. (*Id.* at p. 846; § 361.5, subd. (b).) The bypass provisions reflect the reality “that it may be fruitless to provide reunification services under certain circumstances.” (*Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750.) An appellate court reviews a court’s findings under section 361.5 for substantial evidence (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 843) and “presume[s] in favor of the order, consider[s] the evidence in the light most favorable to the prevailing party, giv[es] the prevailing party the benefit of every reasonable inference and resolv[es] all conflicts in support of the order” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576).

Here, the court relied, inter alia, on section 361.5, subdivision (b)(12), which permits a court to deny reunification services to a parent if the court finds that the parent “has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5 of the Penal Code.” (*Ibid.*) Under Penal Code section 667.5, subdivision (c)(9), “[a]ny robbery” is a violent felony. The court took judicial notice of its own files showing that mother suffered a robbery conviction for which she was sentenced to state prison for six years. Thus, substantial evidence supports the court’s finding under section 361.5, subdivision (b)(12).

The Court Did Not Abuse Its Discretion by Finding It Was Not in the Children's Best Interest to Grant Reunification Services to Mother

Mother contends that granting her reunification services would have been in the children's best interest because she has not been incarcerated since 2006, she insured Jacob received the best services possible to treat his autism, she is strongly bonded to the children, and she is best able to keep them together and provide them with stability and continuity.

Under section 361.5, subdivision (c), the "court shall not order reunification for a parent . . . described in [any one of subdivisions (3) through (16)] of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." "The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, [or] a past history of violent behavior . . . are among the factors indicating that reunification services are unlikely to be successful." In determining the children's best interest, the "court should consider 'a parent's current efforts and fitness as well as the parent's history'; '[t]he gravity of the problem that led to the dependency'; the strength of the bonds between the child and the parent and between the child and the caretaker; and 'the child's need for stability and continuity.'" (*In re William B.* (2008) 163 Cal.App.4th 1220, 1228 (*William B.*)) "[A]t least part of the best interest analysis must be a finding that further reunification services have a likelihood of success. In other words, there must be some 'reasonable basis to conclude' that reunification is possible before services are offered to a parent who need not be provided them." (*Id.* at pp. 1228-1229.)

"A juvenile court has broad discretion when determining whether further reunification services would be in the best interests of the child under section 361.5, subdivision (c). [Citation.] An appellate court will reverse that determination only if the juvenile court abuses its discretion." (*William B., supra*, 163 Cal.App.4th at p. 1229.)

Here, the court did not abuse its discretion by finding it was not in the children's best interest to provide mother with reunification services. Mother lost parental rights over I.C. due to substance abuse. She continued to take many prescription drugs and had also taken "street stuff" recently. The maternal grandmother expressed concern about the children's safety in mother's care if mother were "high." At times mother was incoherent. "Substance abuse is notoriously difficult for a parent to overcome, even when faced with the loss of her children. [Citation.] And the mother's history demonstrated such a difficulty. She had been involved in substance abuse since she was [15] years old," when she gave birth to I.C., and possibly earlier. (*William B.*, *supra*, 163 Cal.App.4th at p. 1228.)

Mother admitted she had a bad temper and a violent past. The maternal grandmother was afraid of mother. The maternal grandfather had applied for a domestic violence restraining order against her. Mother threatened and fought with the visitation monitors.

Jacob's teacher reported the child was most aggressive on Mondays after the weekend and that he needed a structured environment. Mother was unable to provide the children with stability or long term lodging without the maternal grandparents' help. The maternal grandparents were no longer willing to assist.

Mother contends that, due to Jacob's severe autism and K.E.'s possible autism, it is unlikely the children are adoptable as a group. She argues she offers the best chance for the children to grow up together. Under the current circumstances, however, this is untrue since the children's eventual reunification with mother is unlikely. If mother can succeed in changing her circumstances, she can request a modification of the court's order under section 388.

DISPOSITION

The judgment is affirmed.

IKOLA, J.

WE CONCUR:

ARONSON, ACTING P. J.

THOMPSON, J.