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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

M.V.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Real Party in Interest.

H040578

(Santa Clara County
Super. Ct. No. JD21574)

I. INTRODUCTION

M.V. is the mother of A.H., the child at issue in this juvenile dependency case. The mother has filed a petition for writ of mandate seeking review of the juvenile court's orders terminating her reunification services and setting a Welfare and Institutions Code section 366.26¹ permanency planning hearing.

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

In her writ petition, the mother contends the social worker improperly terminated her visitation without a court order and that the juvenile court therefore erred by finding that reasonable services had been provided. The minor's counsel has filed a brief in opposition to the mother's request for relief. For the reasons stated below, we find that the juvenile court's findings and orders are supported by substantial evidence, and we will therefore deny the mother's writ petition.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Section 300 Petition

On November 30, 2012, the Santa Clara County Department of Family and Children's Services (the Department) filed a petition under section 300, subdivisions (b) [failure to protect] and (j) [abuse of sibling] alleging that the child, age two years 10 months, came within the jurisdiction of the juvenile court.² The petition alleged the following facts.

The child's half-sibling and mother tested positive for methamphetamine at the time the half-sibling was born in November 2012. The mother had used methamphetamine three days before giving birth, and she had been abusing methamphetamine since 2010, but she had not sought substance abuse treatment. Further, the mother had been "leaving the child informally with various friends and family members without any provision for support."

The father had a history of abusing methamphetamine, alcohol, and marijuana. He had a felony conviction for second degree burglary, and he was in custody for a probation violation at the time the petition was filed. The father had perpetrated domestic violence against the mother since 2008 and had a restraining order issued against him. The

² A first amended section 300 petition was filed on December 4, 2012. A second amended section 300 petition was filed on December 28, 2012.

mother's current boyfriend had also been violent toward the mother—he had bitten her and strangled her with the child present.

The child had been living with distant relatives, the B.'s, for several days. The B.'s reported that the child had a speech delay, that he responded with fear to loud noises, and that he was aggressive.

B. Detention Hearing

At the detention hearing held on December 5, 2012, the juvenile court found that continuance in the parental home would be contrary to the child's welfare and that removal from the parents' custody was necessary to protect the child's physical or emotional health. The court therefore determined that a prima facie showing had been made that the child came within section 300, and it ordered the child detained.

The juvenile court directed the Department to provide the parents with referrals to parent orientation, parent education, drug and alcohol assessment, drug testing, substance abuse treatment, a 12-step substance abuse program, counseling or psychotherapy, a psychological evaluation, and domestic violence counseling. The court further ordered that the mother have supervised visitation with the child at least two times per week.

C. Jurisdiction and Disposition Reports

The Department prepared a jurisdiction report dated January 2, 2013 and a disposition report dated January 23, 2013. The child was living in a foster home with his half-sibling.

The mother admitted to a social worker that she used methamphetamine and specifically that she had used methamphetamine following a visit with the children on December 1, 2012. The mother recognized that she needed help in order to stay clean and sober.

The mother was referred to inpatient substance abuse treatment, which she began on December 25, 2012. On January 11, 2013, she left the treatment program. She was

then referred to an outpatient program. She had attended some Narcotics Anonymous (NA) meetings, but she had missed drug testing on January 15, 2013.

The mother had visited the child before starting her inpatient treatment. She had been “positive and appropriate in her interactions” with the child. She was interested in having unsupervised visitation but was told that she needed to make “progress in her services” and “fully engage in her case plan.”

The mother reported that the father’s violence towards her had included hitting, punching, kicking, and threatening her. The father was in custody after being arrested for armed robbery and a probation violation; he had been convicted and sentenced to a four-year prison term.

The Department recommended the mother’s case plan include general counseling, the Parent Orientation program, the Parenting Children ages 1-5 class, a 16-week Parenting Without Violence program, substance abuse testing, an outpatient substance abuse program, a substance abuse assessment, and a 12-step substance abuse program (with proof of attendance at two meetings per week).

D. Addendum Reports

In an addendum report dated March 20, 2013, the Department reported on the mother’s progress with her case plan. The mother failed to attend the Parent Orientation class, the Parenting Children ages 1-5 class, and the Parenting Without Violence class. She failed to attend her first therapy session. She had missed her weekly drug testing and admitted that she had been using drugs. She had provided signature sheets from 12-step meetings, but the social worker could not verify that the mother had actually attended the meetings. The mother had previously claimed to have a NA sponsor, but later stated that she was seeking a new sponsor. Similarly, she claimed to have entered a transitional housing unit (THU) but later stated that she was seeking a new THU. She had been dropped from an outpatient substance abuse program due to attendance problems and

lack of participation. She had attended one domestic violence support group meeting, then stopped attending.

The mother had attended her supervised visits with the child, but she had sometimes brought other adults without prior approval. Once, she had brought another child to the visit without prior approval.

In a second addendum report, also dated March 20, 2013, the Department recommended that reunification services be denied as to the father, since he would remain incarcerated, lacked a parent/child relationship with the child, and had perpetrated domestic violence on the mother in the child's presence.

In a third addendum report, dated May 8, 2013, the Department reported that the mother had re-entered an inpatient substance abuse treatment facility but had then voluntarily discharged herself. The facility reported that the mother had difficulty complying with rules: she had not returned on time from community passes, and she had brought a cell phone into the program. The mother had transferred to an outpatient program.

The child and his half-sibling had been placed with the B.'s. The child was "doing well."

E. Jurisdiction/Disposition Hearing

At the jurisdiction/disposition hearing held on May 8, 2013, the father waived reunification services. The mother submitted on the Department's reports. The juvenile court adopted the findings and orders contained in the Department's jurisdiction/disposition report: It declared the child a dependent of the court and ordered his out-of-home placement to continue, and it ordered that reunification services be provided to the mother only, including twice weekly supervised visitation.

F. The Department's Section 388 Petition

On July 11, 2013, the social worker filed a section 388 petition on Judicial Council form No. JV-180 ("Request to Change Court Order"). (See Cal. Rules of Court,

rule 5.570(b).) In the petition, the social worker requested a court order suspending the mother's visitation. The mother had relapsed several times and had missed six visits with the child since May 2, 2013. The child's mental health was being negatively affected by the mother's inconsistent visits. The social worker had informed the mother of the child's emotional distress about the missed visits and asked the mother to confirm visits in advance. The mother nevertheless continued to miss visits or arrive late. The child was "preoccupied with worry" about the mother, and he had demonstrated aggressiveness following visits. The child had thrown long tantrums, banged his head against the bed, and thrown objects at his half-sibling. The child's therapist believed the visits were harmful to the child.

The social worker provided the following timeline in the petition. The mother was an hour late to a visit on May 8, 2013. The mother canceled visits on May 10 and 24, 2013. On the latter date, the mother canceled the visit after the children were already "in route." On June 6, 2013, the social worker informed the mother that if she did not confirm future visits by phone at 8:00 a.m. on the day of the visit, the visit would be canceled. The mother called 20 minutes late on June 7, 2013, so that visit was canceled. The mother canceled visits scheduled for June 12 and 14, 2013. The mother did not call to confirm a visit on June 26, 2013. The next day, the social worker told the mother that if she missed one more visit, her visitation would stop. The mother was 20 minutes late to a visit on June 29, 2013. At that point, the social worker told the mother that "future visits would be stopped" and that she would be filing a motion.

In an interim review report dated August 19, 2013, the Department reported that the mother had been dropped from the Parenting Children ages 1-5 years class and the Parenting Without Violence class due to absences, but that she was scheduled to begin the classes again. The mother had missed an excessive number of counseling sessions, but she had been referred to a new therapist. She had missed drug testing, she had not

completed a drug treatment program, and she had not developed an aftercare relapse prevention program. The mother admitted using drugs in early August of 2013.

In the interim review report, the Department also reported further details about the child's reaction to visits with the mother. According to the foster parents, the child would not only throw long tantrums following the visits, but he would also take feces out of his diaper and wipe it on the walls and carpet. He would often state, "Mommy happy. Mommy sad."

G. Suspension of Visitation

At a hearing held on August 19, 2013, the Department urged the juvenile court to suspend visitation, as requested in the section 388 petition. Counsel for the child supported termination of the mother's visitation. After the juvenile court indicated that it was inclined to grant the Department's request, the mother agreed that a 30-day suspension would be reasonable. The juvenile court then granted the section 388 petition and suspended the mother's visitation for 30 days.

In an interim review report dated September 23, 2013, the Department reported that the child's behavior had begun to stabilize after the mother's visitation was suspended. Also, the mother had tested positive for methamphetamine on September 22, 2013. At a hearing held on September 23, 2013, the juvenile court ordered that the mother's visitation remain suspended and referred the parties to mediation.

In an addendum report dated October 3, 2013, the Department reported that the mother had left residential treatment. She had missed a team decision making meeting concerning the child's placement. The child was no longer preoccupied with how the mother was doing, but he continued to ask for her. The Department recommended that the mother's visits remain suspended until the mother demonstrated compliance with her substance abuse treatment program.

At a hearing held on October 3, 2013, the mother reiterated her position that visitation should not be suspended. Counsel for the child continued to support

suspension of visitation, arguing that visitation was detrimental to the child. The juvenile court ordered that the mother's visitation remain suspended.

H. The Child's Section 388 Petition

On October 15, 2013, counsel for the child filed a section 388 petition. Counsel for the child asked that the court order all visitation to stop until the mother became sober, engaged in substance abuse services, and demonstrated the ability to keep all of her appointments. The petition alleged that the child had exhibited "significant behavioral regressions" when the mother was visiting him and that he had begun to stabilize after the visits were suspended.

At a hearing on October 28, 2013, the mother requested that she have visitation with the child in a therapeutic setting. Counsel for the child argued that any visitation would be detrimental. The Department was similarly opposed to any visitation. The juvenile court set the matter for a contested six-month review hearing and a contested hearing on the section 388 petition, and it ordered that the mother's visitation remain suspended pending the hearing.

I. Status Review Reports

In its status review report for the six-month review hearing, the Department recommended termination of reunification services for the mother. The Department noted that the mother had been unsuccessful in stabilizing her addiction, which had in turn "impeded her ability to address other key areas . . . including intimate partner violence." The Department did not believe the mother would be able to reunify with the child after another six months. Visitation was still suspended, and the Department recommended that any visitation be reduced to once per month.

In an addendum report dated November 21, 2013, the Department reported that the mother had tested positive for methamphetamine and amphetamines on October 18, 2013, resulting in cancellation of her scheduled visit with the child's half-sibling.

In a second addendum report, the Department noted that the mother remained on the waiting list for re-enrollment in the Parent Orientation and Parenting Children ages 1-5 classes. The mother had once again been dropped from the Parenting Without Violence class for failing to participate. The mother had two recent negative drug tests. She had been attending 12-step meetings and had entered residential treatment. She had reportedly been attending weekly domestic violence victims' support group meetings.

In a third addendum report, the Department reported that the mother had missed a drug test and had been absent from her residential treatment for a few hours without providing a "straight answer." The mother falsely claimed she had met with her former social worker that day.

J. Six-Month Review Hearing

The six-month review hearing was held on several dates, in conjunction with a contested hearing on the child's section 388 petition.

On December 5, 2013, the child's social worker testified that the child's behaviors had been "stabilizing" since visitation was suspended, and that there was a direct correlation between the child's behavior and the inconsistent visitations due to mother's relapses. The child's social worker noted that on some occasions, the child had been brought to the Department for a visit, but the mother failed to show up. Afterwards, the child's behavior would change for up to three days. The child's social worker testified that the child had been diagnosed with Reactive Attachment Disorder and that resuming visitation with the mother would put him at risk of having "highly reactive" behaviors unless the mother was in a stable state of sobriety. The child's social worker believed that visitation with the mother would be detrimental for the child. The child's social worker acknowledged that the child's placement had recently changed to a new concurrent home, which increased his vulnerability.

On December 20, 2013, the mother's NA sponsor testified that she had been working through the 12 steps with the mother since July or August of 2013. The mother

had completed her first step two weeks earlier, meaning she had admitted “that she’s powerless over her addiction and her life became unmanageable.” The mother had also completed her second step, but they had not gone over it together yet. The sponsor believed that the mother was attending about three NA meetings per week. The mother had been in regular contact with her for the last two months.

The mother’s social worker testified as an expert in risk assessment for dependent children and as an expert in the area of reunification services. She had worked with the mother and facilitated her visitation with the child. She had filed the initial section 388 petition after the mother had relapsed and missed or been late for visits. She described how the child had begun to “decompensate” at the same time that the mother had relapsed. The child’s therapist had called the social worker with concerns that the visits “were hurting him not helping him.” The mother’s social worker had talked to the mother about the issue, but the mother continued arriving late for visits, which caused the child further stress.

The mother’s social worker described the efforts she had made to support the mother in maintaining sobriety so that the mother could resume visitation. The mother’s social worker had encouraged the mother to resume therapy, but the mother did not contact the therapist. The mother’s social worker had contacted the mother’s treatment counselor to confirm her progress and had encouraged the mother to resume treatment even after her relapses. The mother’s social worker continued to believe that resumption of visitation would be detrimental for the child because of the mother’s “pattern of relapse,” particularly since the mother was still “early” in her current recovery period.

At the December 20, 2013 hearing, the mother testified that she had been clean since October 21, 2013 but admitted she had missed some drug testing since then. The mother also admitted that she had left her residential treatment center in order to see the father of her younger child, but she falsely told treatment staff she was going to meet her social worker. The mother testified she had recently created a relapse prevention plan

and had been attending AA and NA meetings. She had started attending a Parenting Without Violence program and a domestic violence support group.

The next six-month review hearing date was January 9, 2014. At the beginning of the hearing, the Department filed a fourth addendum report. The mother had tested positive for methamphetamine and amphetamine on December 24, 2013, resulting in cancellation of her scheduled visit with the child's half-sibling. The mother had also tested positive for methamphetamine on January 1, 2014. She had been discharged from her THU after she left without authorization.

At the January 9, 2014 hearing, the Department reiterated its position that the juvenile court should terminate the mother's reunification services and set a section 366.26 hearing. The mother asked that the juvenile court continue reunification services, arguing that the Department had not provided her with reasonable services because it had suspended her visitation. The mother further argued that there was no "clear nexus" between her behavior and the child's behavioral problems. Counsel for the child asked the court "to find there is a detriment to the visitation" and argued that the mother had not "availed herself of the services" offered by the Department. At the end of the hearing, the juvenile court took the matter under submission.

On January 16, 2014, the juvenile court granted the child's section 388 petition and terminated the mother's visitation which was still suspended. The court found "clear and convincing evidence that the visitation with the [m]other and [child] resulted in emotional distress." The juvenile court also adopted the Department's recommendations. The court found that the mother had failed to participate regularly and make substantive progress in the court-ordered treatment plan, and that there was no substantial probability that the child would be returned to her within six months. The court further found that reasonable services had been offered to the mother. It terminated reunification services to the mother and set the matter for a selection and implementation hearing (§ 366.26) on May 15, 2014.

K. The Mother's Writ Petition

The mother filed a petition for writ of mandate pursuant to California Rules of Court, rule 8.452 on March 14, 2014, seeking relief from the January 16, 2014 order setting the section 366.26 hearing. She contends the social worker improperly terminated her visitation without a court order and that the juvenile court therefore erred by finding that reasonable services had been provided.

III. DISCUSSION

Before evaluating the mother's contentions, we will provide an overview of the applicable legal principles and the applicable standard of review.

A. Legal Principles

Section 361.5, subdivision (a), generally mandates that reunification services are to be provided whenever a child is removed from the parents' custody. (See *In re Luke L.* (1996) 44 Cal.App.4th 670, 678 (*Luke L.*)) When the child is under three years of age at the time of removal, reunification services are presumptively limited to six months. (§ 361.5, subd. (a)(1)(B).) Reunification services may be extended up to 18 months from the date of removal if the juvenile court finds a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within that extended time period or that reasonable services have not been provided to the parent or guardian. (*Id.*, subd. (a)(3).)

“Reunification services must be ‘designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.’ (§ 362, subd. (c).) Accordingly, a reunification plan must be appropriately based on the particular family’s ‘unique facts.’ [Citation.]” (*In re T.G.* (2010) 188 Cal.App.4th 687, 696; see *Luke L.*, *supra*, 44 Cal.App.4th at p. 678.) “ “[T]he record should show that the [Department] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course

of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult” [Citation.]’ [Citation.]” (*In re T.G., supra*, at p. 697; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793-794.)

“Among its components, the reunification plan must include visitation. (§ 362.1.) That visitation must be as frequent as possible, consistent with the well-being of the minor. (*Ibid.*)” (*Luke L., supra*, 44 Cal.App.4th at p. 679; § 362.1, subd. (a)(1); rule 5.695(h)(5).) However, “[n]o visitation order shall jeopardize the safety of the child.” (§ 362.1, subd. (a)(1)(B).)

“Only where there is clear and convincing evidence the [Department] has provided or offered reasonable services may the court order a section 366.26 hearing.” (*Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1165 (*Robin V.*); § 366.21, subd. (g)(2).) “The adequacy of reunification plans and the reasonableness of the [Department’s] efforts are judged according to the circumstances of each case.” (*Robin V., supra*, at p. 1164; *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) That additional services might have been possible, or that the services provided were not the services the parent thought were best for the family, does not render the services offered or provided inadequate. “ ‘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 T.G., supra*, 188 Cal.App.4th at p. 697; *In re Misako R.* (1991) 2 Cal.App.4th 538, 547 (*Misako R.*).

On appeal, the applicable standard of review is sufficiency of the evidence. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688 (*Kevin R.*)). “In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the [Department]. We must indulge in all legitimate and reasonable inferences to uphold the [juvenile court’s findings]. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed.” (*Misako R., supra*, 2 Cal.App.4th at p. 545; *In re Monica C.* (1995) 31 Cal.App.4th 296,

306.) “We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

B. Analysis

As noted above, the mother contends the social worker improperly terminated her visitation without a court order and that the juvenile court therefore erred by finding that reasonable services had been provided.

First, the social worker did not terminate mother’s visitation without a court order. After the mother missed a number of visits, the social worker temporarily stopped her visitation and timely filed a section 388 petition, seeking a court order suspending the mother’s visitation. On August 19, 2013, the juvenile court granted the section 388 petition and ordered the mother’s visitation suspended for 30 days. The mother agreed that a 30-day suspension would be reasonable. At hearings held on September 23, 2013 and October 3, 2013, the juvenile court ordered the mother’s visitation to remain suspended. On October 28, 2013, the juvenile court also ordered the mother’s visitation to remain suspended pending the contested six-month review hearing and the contested hearing on the child’s section 388 petition.

Second, there is substantial evidence to support the trial court’s finding that the Department provided reasonable services to the mother. (See *Misako R.*, *supra*, 2 Cal.App.4th at p. 545.) The Department identified the problems leading to the removal of the child and offered services designed to remedy those problems. Specifically, the Department referred the mother to a number of parenting classes, drug rehabilitation programs, and resources for victims of domestic violence. When “ ‘ ‘compliance proved difficult” ’ ” for the mother, the Department helped her to re-enroll in parenting courses and rehabilitation programs. (See *In re T.G.*, *supra*, 188 Cal.App.4th at p. 697.) The Department also maintained reasonable contact with the mother throughout the

reunification process. (See *ibid.*) For instance, prior to filing the section 388 petition, the Department communicated with the mother about the child's reaction to canceled or late visits, and the Department developed a plan for communication with the mother on the day of each visit. Even after the mother's visits were suspended, the Department communicated with the mother and encouraged her to resume substance abuse treatment and to participate in therapy and parenting classes.

Further, the juvenile court's decision to suspend the mother's visitation was reasonable under the circumstances of this case. There is substantial evidence that continuing visitation would have been "harmful to [the] child's emotional well-being." (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1357.) Despite the Department's communication and warnings, the mother was repeatedly late for visits or did not show at visits. The child became stressed when the mother did not show up or was late, and he acted out aggressively, posing a physical danger to himself and his half-sibling. Under the circumstances, the juvenile court reasonably decided not to "sit idly by while [the] child suffered extreme emotional damage" caused by the inconsistent visitation. (*Ibid.*)

Moreover, the court initially suspended the mother's visitation for only a 30-day period, giving her the opportunity to show that she was taking steps to address her behaviors, particularly her drug addiction, and thus show that she could be more reliable in visiting the child. However, even after her visitation was suspended on August 19, 2013, the mother failed to make progress in her case plan. By the time of the next hearing, on September 23, 2013, the mother had tested positive for methamphetamine. By the time of the October 3, 2013 hearing, the mother had left residential treatment and missed a team decision making meeting. Over the next few months leading up to the contested hearing, the mother relapsed again, missed a drug test, and was dropped from a parenting program for the second time. In light of the mother's failure to overcome the behaviors that led to suspension of visitation, the juvenile court reasonably determined

that the Department had made reasonable efforts but that the mother's visitation should remain suspended.

In sum, substantial evidence supports the juvenile court's decision to terminate reunification services to the mother. (See *Kevin R.*, *supra*, 191 Cal.App.4th at p. 688.) We will therefore deny the mother's writ petition.

IV. DISPOSITION

The petition for writ of mandate is denied.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.