

NOT TO BE PUBLISHED IN OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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 TWO

P.M.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E075420

(Super.Ct.No. J278004)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Annemarie G.
Pace, Judge. Petition denied.

Law Offices of Valerie Ross and Valerie Ross for Petitioner.

No appearance for Respondent.

Michelle D. Blakemore, County Counsel, and Pamela J. Walls, Special Counsel,
for Real Party in Interest, San Bernardino County Children and Family Services.

In this writ proceeding filed pursuant to California Rules of Court, rule 8.452, P.M. (father) seeks relief from the juvenile court’s order terminating his reunification services and setting a hearing under Welfare and Institutions Code¹ section 366.26 for his child E.M. (child). Father contends that “there is an insufficient evidentiary showing the child would be at risk in father’s care.” We deny the petition.

I. FACTS

Born in September 2017, the child came to the attention of real party in interest San Bernardino County Children and Family Services (CFS) in September 2018, after a referral alleging general neglect and severe neglect related to mother’s history of alcohol abuse.² Mother had been arrested on September 7, 2018 for driving under the influence with the child in the car—the latest in a series of similar arrests.

Mother would later tell a social worker that she felt father had “set her up for an arrest and called the cops.” Mother and father had not lived together since April 2018. On the date of her most recent arrest, mother had dropped the child off with father. She said that she later received a text from father saying that he had been in a car accident. She arrived to find father “to be well and drinking with his friend,” but the child was not there. Father asked her to drink with him, and she felt compelled to do so, because in the past father had become violent when he drinks. Father eventually revealed that the child

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

² Mother is not a party and will be discussed only as necessary for context.

was with the paternal grandmother. Mother went to pick the child up, and was arrested within two minutes of leaving the grandmother's house, with a blood alcohol level of .08 percent.

Father had previous arrests and convictions for domestic violence, willful cruelty to a child, and driving under the influence, among other things. On September 18, 2018, he had been convicted of inflicting corporal injury on a spouse (Pen. Code, § 273.5, subd. (a)) and sentenced to 180 days in jail and three years of probation. Nevertheless, father denied to the social worker that he had ever "laid hands" on mother, instead claiming that mother had "cracked his head open." Prior to the child's birth, mother had been arrested several times on suspicion of domestic violence, but she had not been convicted of such charges.

The child was detained out of the parents' custody and placed in a foster home in October 2018. At the jurisdictional hearing, after the parents signed waivers of rights, the juvenile court sustained the dependency petition as amended. Specifically, the juvenile court found that it had jurisdiction under section 300, subdivision (b) (failure to protect) based on both parents' substance abuse problems, father exposing the child to domestic violence, and mother's history of domestic violence, as well as subdivision (j) (abuse of a sibling), based on a prior dependency case involving mother and four half-siblings, where she failed to reunify with the children and custody was given to the children's father.

At the six-month review hearing, the juvenile court accepted CFS's recommendation that reunification services to the parents be continued, while the child

remained in foster care. The juvenile court found the parents' progress to be "moderate." Father had completed his case plan services and appeared to have benefited from them. Concerns remained as to father, however, because he had been dishonest with CFS about the status of his driver's license and had been "driving the child around with a suspended license." Also, father reported that the child had been unwilling to eat during four-hour unsupervised visits. The foster parents reported that the child "always wants to eat in their home." Also, after the visits with father, there were "reported concerns regarding the child's behavior and reverting to tantrums and anger outbursts."

At the 12-month status review, CFS recommended termination of mother's reunification services. Although mother had participated in some services, CFS judged her progress as "minimal." She had not regularly visited with the child, had failed to submit to random drug tests, and her living situation indicated unresolved substance abuse problems.

Initially, CFS further recommended that the child be returned to father's physical custody with family maintenance services. The child's attorney, however, objected, noting father had missed two drug tests, that the child had returned from visits with father with severe diaper rash, and that the child demonstrated aggressive behavior towards himself and others after the visits. During an unannounced visit to father's home during unsupervised visitation, the social worker had found the child's diaper to be "full." The foster parents reported that after visits with father the child was "often returned to them with residue from bowel movements on his penis and inner thighs."

After further investigation, CFS recommended that the child not be returned to father's custody, but remain in foster care with continued reunification services for father. Father claimed that the child had diaper rash when dropped off with him, and that he had treated it. Pictures from the foster father of a "painful" looking rash tended to support a different conclusion. The juvenile court accepted CFS's revised recommendation.

At the 18-month status review, CFS recommended termination of father's reunification services and setting a section 366.26 hearing. Each of three separate issues tended to weigh against returning the child to father.

First, father had disobeyed court orders by allowing the child to visit with mother. The juvenile court had ordered that mother's visitation be supervised by CFS or its delegate. On December 9, 2019, however, a social worker found mother visiting with the child in father's apartment, with only father's teenage daughter present. The daughter told the social worker that father was at work, but the paternal grandmother was on her way to pick up the child. Mother refused to respond when the social worker asked how long she had been seeing the child unsupervised, saying only that the grandmother had been called and was on her way.

Father arrived home a short time later. He denied giving mother his new telephone or address and initially blamed the teenage daughter for allowing mother in the home. Later, he said: "[mother] pulled at my heart strings because she . . . called me and told me she had not seen [the child] in months and missed him so I was going to let her have a visit with him but I was going to supervise but I never confirmed anything with

her she just showed up while I was working.” He suggested that mother had friends who lived in the same apartment complex who ““probably saw”” father and told mother that he lived there. At the contested 18-month status review hearing, father testified that he works across the street from his apartment, and that he had gone to work for a four-hour extra shift to deal with an “emergency.” He had planned to come home to take the child to the doctor later in the day because “he had a little boil on his leg.” He testified that he did not know mother was coming to visit.

A second area of concern was allegations that father may have physically abused and neglected a two-year-old half-sibling of the child. A September 2019 referral to CFS had been closed as inconclusive, after a social worker concluded that bruises observed on the half-sibling’s head and neck were consistent with father’s claim that he had been supporting her while she was “vomiting all over the place.” In June 2020, however, the half-sibling returned from an unsupervised visit with father with several bruises on her body, including two bruises on her thighs. Father claimed the child had fallen while playing on playground equipment. Doctors at the Children’s Assessment Center found the bruises to be “highly suspicious for physical abuse” and inconsistent with father’s description of how they had occurred.

CFS filed a section 300 petition with respect to the half-sibling, which was adjudicated in the same proceedings as the child’s contested 18-month review hearing. The juvenile court found that the half-sibling came within section 300, subdivisions (a)

(physical abuse); (b) (failure to protect); and (j) (abuse of a sibling). The half-sibling's dependency case was closed with family law orders.

A third area of concern related to the emotional well-being of the child. The child had received therapy for post traumatic stress disorder and inability to regulate his mood and behaviors. He had made sufficient progress to be able to "successfully graduate from the therapy." The child was affectionate with his foster parents, who appeared "to be meeting all of the child's needs" and had expressed interest in adopting him. After visits with father, however, the child would have "difficulty readjusting" and he would again "display[] aggression," though the foster parents were "able to manage it."

At the contested 18-month status review hearing on July 27, 2020, the juvenile court found that father had not "sufficiently benefitted" from his services. It found that father "did, in fact, let [mother] have contact with the child outside of the Department's authorizations," and that his denials were not credible. It found that there were no "extraordinary circumstances" that might justify continued services, and that returning the child to father would be inappropriate in light of the findings in the half-sibling's case, "as well as the violation of the Court's orders and the social worker's authorizations" regarding the child. On that basis, the juvenile court terminated father's services and set a section 366.26 hearing for November 24, 2020.

Father timely filed a notice of intent to file a writ petition.

II. DISCUSSION

A. *Applicable Law*

“Until reunification services are terminated, there is a statutory presumption that a dependent child will be returned to parental custody.” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) For a child under three years of age at the time of removal, the “absolute maximum period for services is 18 months (§ 361.5, subd. (a)), provided the court determines at both a six-month review hearing and a 12-month review hearing that continuation of services is warranted.” (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) Thus, at the 18-month review hearing, the juvenile court must order the child returned to parental custody “unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent . . . would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.” (§ 366.22, subd. (a)(1).)

We review the juvenile court’s finding of a substantial risk of detriment for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) “We must view the evidence in the light most favorable to the department and indulge all legitimate and reasonable inferences to uphold the order.” (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.)

B. *Analysis*

Father argues that there is no substantial evidence to support the juvenile court's ruling that returning the child to father's care would create a substantial risk of detriment to the child's well-being. We are not persuaded.

It is undisputed that the evidence supports the trial court's conclusion that father allowed mother to visit with the child in violation of court orders and CFS authorizations. The social worker discovered the child in father's apartment, but in mother's care, without any other adult present, let alone supervision approved by the court. Father proposes only that "any risk to [the child] from mother's visit was merely speculation." Not so. Among other things, allowing mother to visit is reasonably viewed as a continuation of father's failure to protect the child from mother's unresolved substance abuse issues, one of the causes of the dependency. Mother was arrested for driving under the influence with the child in the car. The risk to the child's well-being posed by such behavior is not speculative. And mother's own reunification services were terminated in part because her substance abuse issues remain unresolved. Even assuming mother was sober and not driving when the social worker discovered her caring for the child in father's apartment, there is ample cause for concern that might not be the case in the future.

Additionally, although physical abuse of the child was not the basis for this dependency, father had recently been adjudged responsible for the physical abuse of the child's half-sibling. It is hardly a stretch to conclude that there would be a substantial

risk to the child's well-being if he were to be placed in the care of someone who recently abused (or failed to protect from physical abuse) a different child, particularly one of a similar age. Father cites no authority for the proposition that the allegations in this case would have to be amended to include reference to the abuse of the half-sibling for the court to be permitted to consider it in determining detriment, and we are aware of none.

Further, father's claim that there was no substantial evidence supporting the physical abuse findings regarding the half-sibling is without merit. The half-sibling had bruises that an expert found "highly suspicious for physical abuse," and father's explanation of what had caused them was not consistent with the physical evidence. The juvenile court reasonably inferred that father had either physically abused the half-sibling or failed to protect her from physical abuse while she was in his care. Father suggests that "if [father] can be said to have abused a sibling of [the child], [father] should be given services to address that issue." But father already had received services for 18 months. He was not entitled to more. (*Tonya M. v. Superior Court, supra*, 42 Cal.4th at p. 842.)

Finally, the child is "entitled to stability, something that had developed in the foster home." (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 709.) The child was doing well in the care of his foster parents, who appeared "to be meeting all of the child's needs," and who had cared for him for the majority of his life. There was evidence that the child's emotional health tended to regress during and after visitation with father, at least arguably showing the importance of the foster parent's care for the

child's recovery from previous trauma. The juvenile court reasonably could have concluded that returning the child to father's custody would be detrimental because it would "end the loving and stable relationship which had developed" with the foster parents during the extended dependency. (*Ibid.*)

We conclude that the juvenile court's ruling was amply supported by substantial evidence.

III. DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAPHAEL
J.

We concur:

MCKINSTER
Acting. P. J.

FIELDS
J.