Filed 7/13/20 In re E.S. CA5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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

FIFTH APPELLATE DISTRICT

In re E.S. et al., Persons Coming Under the Juvenile Court Law.	
STANISLAUS COUNTY COMMUNITY SERVICES AGENCY, Plaintiff and Respondent, v. M.G., Defendant and Appellant.	F080354 (Super. Ct. Nos. JVDP-19-000046, JVDP-19-000047) **OPINION**

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q. Ameral, Judge.

Michelle E. Danley, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

-ooOoo-

* Before Poochigian, Acting P.J., Peña, J. and DeSantos, J.

M.G. (mother) appealed from the juvenile court's order issued at a contested Welfare and Institutions Code section 366.26 hearing[1] terminating her parental rights as to her now four- and three-year-old daughters, E.S. and Y.G., respectively. After reviewing the juvenile court record, mother's court-appointed counsel informed this court she could not find any arguable issues to raise on mother's behalf. This court granted mother leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H*. (2009) 47 Cal.4th 835, 844.)

Mother filed a letter in which she contends she was given less than three months to reunify and the social worker was not supportive of her efforts. She also contends she was denied a contested section 366.26 hearing and a bonding study. We conclude mother failed to set forth a good cause showing that any arguable issue of reversible error arose from the section 366.26 hearing. (*In re Phoenix H*., *supra*, 47 Cal.4th at p. 844.) Consequently, we dismiss the appeal.

PROCEDURAL AND FACTUAL SUMMARY

Mother was arrested on June 1, 2018, and charged with child endangerment. She was under the influence of a stimulant and the home in which she and the children lived was cluttered, filthy, and hazardous with exposed electrical wires. There were feces on the floor and old food and bugs in the kitchen. She tested positive for methamphetamine and admitted ongoing use. The Stanislaus County Community Services Agency (agency) offered her family maintenance services and she was admitted to Stanislaus Recovery Center, Nirvana Drug and Alcohol Treatment Program and First Step Perinatal Program at different times during her voluntary case but did not complete the programs. The agency closed her case in January 2019. At that time, mother was testing negative for drugs and her house was clean.

---

1 Statutory references are to the Welfare and Institutions Code.

The agency received a new referral on February 19, 2019, that the home was dirty with soiled diapers on the floor. Both children were nude and mother appeared unable to carry on a normal conversation. When a social worker and sheriff's deputies arrived, they found beer cans, soiled diapers, bags of garbage, dirty laundry, and blankets in the front yard. A deputy found a "straw" used for heroin use near the front entrance to the home. No one was home. The sliding back door was broken and wide open. The front sliding door was open. From the porch, the social worker could see exposed electrical wires on the floor, a heater sitting in the middle of the living room, and plywood duct taped to the window. The refrigerator door was wide open with what appeared to be rotten food inside; there was old food on the couch; dirty pots and pans were in the sink and on the kitchen counters. There were feces on the floor.

Mother's 10-year-old son said he saw methamphetamine in mother's home two weeks prior[2] and multiple neighbors reported observing mother use drugs with her boyfriend. Neighbors also reported seeing the girls outside unsupervised and completely naked.

The social worker attempted to locate mother and the two girls over the next few days. Y.G., then two years old, was located at her paternal grandparents' home and detained. On February 21, 2019, the maternal grandmother took E.S. to the agency's office. She denied the allegations and insisted mother took good care of the girls. She blamed the neighbors for calling the agency and spoke negatively about mother's prior social worker. She said a babysitter had dropped E.S. off at her bookkeeping business.

E.S., then three years old, was infected with lice and one foot was red and swollen. She was not toilet trained and her speech was extremely limited; she could not even pronounce her name. She was placed in protective custody.

---

[2] Mother has a son and daughter, now 11 and eight years old, respectively, who visited mother but were in their father's custody.

The agency filed a section 300 petition, alleging mother's substance abuse and mental illness resulted in willful neglect of the children. It further alleged that E.S.'s father, David S., had a criminal history including assault, substance abuse and theft offenses. Y.G.'s father, B.F., was alleged to have a history of domestic violence. The agency placed the children together in foster care with a family friend.

The juvenile court ordered the children detained and the agency provided mother and David referrals for parenting, individual counseling and a clinical assessment at Sierra Vista Child and Family Services (Sierra Vista). They were also provided with information and a referral for a substance abuse assessment. B.F. was notified of the detention hearing but did not attend or contact the agency.

On April 8, 2019, mother appeared with her attorney at the jurisdiction and disposition hearing. Her attorney made an offer of proof which the juvenile court accepted that mother disagreed with the agency's description of her home. Mother's attorney also advised the court mother approved of the children's placement but supported them being placed with the maternal grandmother. The juvenile court sustained the allegations, removed the children from parental custody and ordered mother and David to participate in reunification services. To that point, neither of them had availed themselves of the services offered at detention. The court denied B.F. reunification services as to Y.G. The court found there was a substantial likelihood the children could be returned to parental custody within six months but advised the parents that reunification services could be terminated at the end of six months if they failed to make sufficient progress in completing their service plan requirements. The court set a progress review hearing for July 11, 2019, and the six-month review hearing for October 1, 2019.

On June 20, 2019, the agency filed a modification petition under section 388 (section 388 petition) seeking to terminate mother's and David's reunification services at

the status review hearing set for July 11, 2019, because they were not participating in any services and ceased visiting the children. Mother's last visit was on April 15, 2019.

At the July 11, 2019 status review hearing, mother's attorney requested a contested hearing on the agency's section 388 petition. Mother was not present. Her attorney explained that she had a medical appointment. The juvenile court granted the request and set a hearing for July 25, 2019. It stated no further notice would be required because proper notice was given.

Neither mother nor David appeared at the contested review hearing on July 25, 2019. No explanation was requested or given regarding mother's absence. An offer of proof made by county counsel was accepted that the parents had not visited the children or made any further progress in their services since the agency filed its report on June 24, 2019. Mother's attorney objected to the agency's recommendations but did not present any evidence. The court granted the section 388 petition and terminated reunification services. A section 366.26 hearing was set for November 22, 2019. Neither parent sought extraordinary writ relief. (Cal. Rules of Court, rules 8.450–8.452.)

In October 2019, the maternal grandmother filed a section 388 petition asking the juvenile court to place the children with her. The court set a hearing on November 13, 2019, to determine whether an evidentiary hearing on grandmother's section 388 petition should be held.

In its report for the section 366.26 hearing, the agency recommended the juvenile court terminate parental rights and select adoption as the children's permanent plan. It reported the children were removed from the family friend in September 2019 and placed with a prospective adoptive couple because of allegations against the family friend pertaining to other children in the home. There also had been an unauthorized visit between the minors and mother, which included the maternal grandmother. Although the children's placement was recent, they adjusted very quickly to their prospective adoptive parents and were affectionate and comfortable with them.

The agency also reported mother was pregnant and completed residential treatment at Stanislaus Recovery Center in October 2019. She planned to continue treatment at First Step Perinatal Program and "Redwoods." She said the possibility of losing her parental rights became more "real" after the children were removed from the family friend.

On November 13, 2019, the juvenile court denied the maternal grandmother's section 388 petition without conducting a hearing and confirmed the section 366.26 hearing for November 22.[3]

Mother appeared at the section 366.26 hearing on November 22, 2019, with her attorney, who requested a contested hearing to argue the beneficial parent-child relationship exception to adoption and discuss relative placement. She had a visit on October 21 and believed there was a sufficient bond to support the exception. Her attorney informed the court the maternal grandmother and a maternal aunt who lived in San Jose contacted the agency regarding placement when the children were moved to their current placement in September 2019. The aunt was told to complete the approval process in San Jose but no further action was taken on her request. She was present and willing to adopt the children. Mother's attorney wanted to present that evidence to the court. The social worker stated she could not address the aunt's claims without reviewing her notes, which would require the court to trail or reset the hearing.

The juvenile court did not find grounds to set a contested hearing based on mother's failure to regularly visit the children. The court pointed to the agency's report that she visited on April 15, 2019, there was an unauthorized visit on September 1, 2019, and a visit on November 21, 2019. Mother stated she also saw the children on

---

[3] The maternal grandmother appealed, contending the juvenile court abused its discretion in denying her section 388 petition without conducting an evidentiary hearing. We affirmed. (*Stanislaus County Community Services Agency v. M.G.* (June 11, 2020, F080334) [nonpub. opn.].)

October 21, 2019, when she completed treatment at Stanislaus Recovery Center. After verifying the visits, the court stated, "But I don't see where that is regular and consistent visits." Mother's attorney stated, "I understand. My client would still like the opportunity to convince you that that is, and that her attachment with the children rises by clear and convincing evidence to meet that exception."

The juvenile court denied the request for a continuance, stating:

> "[T]he mother does not even meet the first prong of the parent-child beneficial exception. Four visits, one of which was unauthorized, in this Court's mind is not regular and consistent visits, especially [since] mother [has] had a lot of opportunity and she has missed way too many visits. So she wouldn't even manage to meet the first prong. And if she can't meet the first prong, then we don't even go to the second prong."

As for relative placement, the juvenile court stated, "the Agency is required to assess all relatives and I expect that the Agency would do that. And I don't have any evidence that the Agency has abused [its] discretion …."

The juvenile court asked counsel if they had any evidence, witnesses or offers of proof. Counsel, including mother's attorney, stated they did not.

The juvenile court terminated parental rights, finding the children were likely to be adopted and none of the exceptions to adoption applied.

DISCUSSION

An appealed-from judgment or order is presumed correct. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) It is appellant's burden to raise claims of reversible error or other defect and present argument and authority on each point made. If appellant fails to do so, the appeal may be dismissed. (*In re Sade C*. (1996) 13 Cal.4th 952, 994.)

When the juvenile court orders a child removed from parental custody, the court is required to order services to reunify the parent and child absent circumstances not present here. (§ 361.5, subds. (a) & (b).) The duration of reunification services depends on the age of the child at the time of the initial removal and whether a sibling of the child was

also removed. When, as here, siblings are removed together and one of the siblings is younger than three years, the juvenile court may terminate reunification services after six months from the dispositional hearing if the parent does not comply with the court-ordered services plan. (§ 361.5, subd. (a)(1)(B) & (C).) Any party, including the social services agency, may petition the court under section 388 to terminate reunification services prior to the six-month review hearing if parental inaction creates a substantial likelihood that reunification will not occur. Parental inaction includes failure to visit the child and participate regularly and make substantive progress in court-ordered services. (§ 388, subd. (c)(1).)

The juvenile court may terminate reunification services at the six-month review hearing and set a section 366.26 hearing for a child who is a member of a sibling group if it finds by clear and convincing evidence the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan. However, if the court finds there is a substantial probability the child can be returned to parental custody within six months or the parent was not provided reasonable reunification services, the court must continue the case to the 12-month review hearing. (§ 366.21, subd. (e)(3).)

A parent wishing to challenge the juvenile court's findings and orders issued at a setting hearing must do so by timely filing an extraordinary writ petition in the appellate court. (Cal. Rules of Court, rules 8.450–8.452.) Failure to file a writ petition precludes subsequent review on appeal. (§ 366.26, subd. (*l*)(2).)

In this case, E.S. was three years old when she was initially removed from mother's custody. However, because she was removed with Y.G. who was under the age of three, they were a sibling group. Consequently, the juvenile court could limit mother's reunification services to six months from the dispositional hearing or sooner on a section 388 petition. (§§ 366.21, subd. (e)(1), 388, subd. (c)(1).)) The juvenile court advised mother at the dispositional hearing that her noncompliance could result not only

in the termination of her reunification services but also of her parental rights. Nevertheless, she failed to visit the children or participate in her services plan.

Mother is correct in observing that she received less than six months of services from the dispositional hearing in April 2019. In fact, she received three months of services between the dispositional hearing and the setting hearing in July. However, she was given referrals for services at the detention hearing in February 2019, which, if utilized, would have given her five months to make some progress. In any event, the evidence supports the juvenile court's decision to terminate mother's services early in light of her failure to participate in services and regularly visit the children.

Mother faults the social worker for not supporting her efforts to reunify, which could be construed as a challenge to the reasonableness of reunification services provided. She also alludes to a notice issue, claiming her attorney did not notify her of the hearing on July 25, 2019. However, she failed to seek writ review of the court's findings issued at the July 25, 2019 hearing. Consequently, she forfeited her right to now challenge them on appeal.

Mother further contends she was denied a contested section 366.26 hearing. She claims she was given a copy of the agency's report the day of the hearing and was not given an opportunity to present evidence rebutting the agency's assertion she visited her daughters only four times between April and November 2019. She asserts she had witnesses to testify on her behalf, including the former foster parent who was prepared to testify about visitation. In addition, she successfully completed an inpatient drug rehabilitation program and was in the process of starting an outpatient drug treatment program that included parenting classes. She also contends she was denied a bonding study. She asked her attorney to request one because terminating her parental rights will negatively impact her children.

By the time a dependency case reaches a section 366.26 hearing, there are few options available to the juvenile court. Efforts to reunify the parent and child have ceased

and the court's focus is on whether it is likely the child will be adopted. (*In re Marilyn H*. (1993) 5 Cal.4th 295, 309.) If, as in this case, the child is likely to be adopted, the juvenile court must terminate parental rights unless the parent proves there is a compelling reason for finding that termination would be detrimental to the child under any of the exceptions to adoption listed in section 366.26, subdivision (c)(1)(B). The party seeking to establish the existence of one of the exceptions has the burden of producing that evidence. (*In re Megan S*. (2002) 104 Cal.App.4th 247, 252.)

"While a parent in a juvenile dependency proceeding has a due process right to a meaningful hearing with the opportunity to present evidence [citation], parents in dependency proceedings 'are not entitled to full confrontation and cross-examination.' [Citation.] Due process requires a balance. [Citation.] The state's strong interest in prompt and efficient trials permits the nonarbitrary exclusion of evidence [citation], such as when the presentation of the evidence will 'necessitate undue consumption of time.' (Evid. Code, § 352.) The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court." (*Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1146–1147.)

Mother's attorney requested a contested hearing on the applicability of the beneficial parent-child relationship exception to adoption, which applies where the parent maintained regular visitation and contact with the child and the child would benefit from continuing the parent-child relationship. Evidence of such a relationship signifies that severing the parent-child relationship would be detrimental to the child and provides a compelling reason to avert termination of parental rights. (§ 366.26, subd. (c)(1)(B)(i).)

Here, there is nothing on the record indicating mother was deprived the opportunity to present relevant evidence probative on the issue of the beneficial parent-child relationship exception. Evidence was presented through the agency's report and discussion in open court about the frequency of mother's visitation. She was permitted to clarify the days she visited and her assertions were accepted by the court. The court,

however, concluded that four visits during the prior seven months was insufficient to establish she regularly visited and contacted the children, a minimum showing to establish the exception. Mother fails to show what other relevant evidence she could have presented at a contested hearing. Contrary to her assertion, there is no evidence witnesses were present to testify on the issue. The only person mentioned in the record was mother's aunt, who was present seeking to adopt the children.

Further, the burden of proving a beneficial parent-child relationship is a steep one; "the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child." (*In re I.W*. (2009) 180 Cal.App.4th 1517, 1527.) Mother's children had been out of her custody for nine months, which is significant given their very young ages, and had little contact with her. In that time, they grew attached to foster parents who fulfilled a parental role for them and met their daily needs. Mother would therefore be hard pressed to show any error the juvenile court committed in denying her a contested hearing was not harmless under the circumstances of this case. (*In re Thomas R*. (2006) 145 Cal.App.4th 726, 734.)

As to a bonding study, there is no record such a request was made by mother or her attorney. Consequently, mother forfeited the issue for review. Further, the juvenile court is not required to secure a bonding study before terminating parental rights. (*In re Lorenzo C*. (1997) 54 Cal.App.4th 1330, 1339.) Nor is there any evidence a bonding study would have assisted the court in making its decision whether to terminate parental rights. (*Id*. at p. 1341.)

We conclude mother failed to show good cause that an arguable issue exists on this record and dismiss the appeal.

DISPOSITION

This appeal is dismissed.