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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re AUTUMN H., a Person Coming
Under the Juvenile Court Law.

B233018

(Los Angeles County
Super. Ct. No. CK77862)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

MAXINE S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Timothy R. Saito, Judge. Affirmed.

Cameryn Schmidt, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Aileen Wong, Deputy County Counsel for Plaintiff and Respondent.

Maxine S. (mother), the mother of Autumn H. (born in March 2008), appeals from the juvenile court's order terminating reunification services and requiring Autumn to remain placed in foster care. She contends substantial evidence does not support the juvenile court's findings, made at an 18-month review hearing held pursuant to Welfare and Institutions Code section 366.22,¹ that mother had not substantially complied with her case plan, and that returning Autumn to mother's custody would create a substantial risk of detriment to Autumn's physical and emotional well-being. Substantial evidence supports the juvenile court's findings, and we therefore affirm the court's order.

BACKGROUND

1. Detention and section 300 petition

On June 21, 2009, the El Monte Police Department and the Los Angeles Department of Children and Family Services (the Department) responded to a call regarding mother. The officers found mother and 15-month-old Autumn hiding in the bushes. Mother was attempting to cover herself and the child with leaves, dirt, and twigs. A witness told one of the officers that mother had been shoving twigs down Autumn's throat and covering the child's mouth to keep her quiet. The witness saw Autumn's hand and legs flailing about as if the child were struggling to breathe.

Mother told the officers she had been forced by four unknown men to smoke methamphetamine. The men threatened to take Autumn away from mother, so mother took Autumn and ran away from them. Mother was arrested and taken into custody. While in custody, mother assaulted another inmate, who required hospitalization for her resulting injuries.

Autumn was examined and found to be in good health, except for multiple scratch marks she sustained while hiding in the bushes with mother. She was placed in a foster home.

Mother had four older children, ages 19, 17, 15, and 9, all of whom resided in Fairfield, California with their father, Edgar S. According to mother, she and Edgar had

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

parented Autumn together as a couple, and Edgar viewed himself as Autumn's father. Autumn's biological father, Luis H. (father), had not been in contact with mother or with the child, and mother did not know his whereabouts. Mother could not remember when she had last seen father, but the last time they were together, both she and father had been arrested on drug possession charges. Mother also admitted to a 2009 arrest for domestic violence against Edgar.

Edgar told the Department's social worker that mother had travelled from Fairfield to El Monte in June 2009 to participate in drug rehabilitation classes that were required as the result of an earlier arrest for drug possession. Edgar suspected that mother had been using drugs because she stayed up all night and was emotionally abusive to him and to the children. He reported mother to the Fairfield Police Department in 2009 for "emotional abuse," and mother was arrested at that time.

The Department filed a petition under section 300, subdivisions (a), (b) and (g) alleging that Autumn was at risk of physical abuse and neglect as the result of mother's drug use. The petition also alleged that father had failed to provide for Autumn.

Mother was present at the June 24, 2009 detention hearing and denied the allegations. The juvenile court found father to be Autumn's alleged father and ordered Autumn detained.

2. Jurisdiction/disposition

Following her June 21, 2009 arrest, mother pled no contest to misdemeanor child cruelty and being under the influence of a controlled substance. The criminal court sentenced mother to 90 days in county jail, placed her on summary probation, and ordered her to complete 52 sessions of parenting classes. The criminal court also issued a restraining order prohibiting mother from having any contact with Autumn.

In a July 2009 interview, mother told the Department's social worker that several men had been chasing her on the day of her June 21, 2009 arrest. She denied putting twigs in Autumn's mouth or trying to harm the child in any way. Mother admitted using methamphetamine on the day of her arrest. She said she first used methamphetamine three years earlier but did so only once a month. She denied using drugs in her children's

presence and said she did not believe her occasional drug use rendered her incapable of caring for the children. She also denied being violent toward Edgar or anyone else.

In a separate interview, Edgar told the social worker that mother and Autumn had lived with him since Autumn's birth, and mother had taken good care of Autumn and her other children. He believed mother began using drugs approximately 10 years ago. Although he had never seen her use drugs, he suspected that she was on drugs when she came home and stayed up all night without sleeping. Edgar said that mother's drug use was the cause of their divorce approximately two years ago.

Mother was arrested in April 2009 for physically assaulting and threatening Edgar in the presence of their minor son. Edgar said that mother was upset about their divorce and had threatened him in the presence of their nine-year-old son. That night while Edgar was sleeping, he felt something sharp on his leg, woke, and saw mother. He tried to get away from her and she began scratching him either with her fingernails or a sharp object. He reported the incident to the police, who arrested mother. An emergency protective order was subsequently issued against mother.

In addition to the April 2009 domestic violence arrest and the June 2009 arrest that resulted in Autumn's detention, mother's criminal history included several drug-related arrests in 2006, two arrests due to warrants in 2007, a 2006 conviction for possession of drug paraphernalia, and a 2009 conviction for use of a controlled substance.

On July 16, 2009, the Department filed a first amended petition adding an allegation that mother and Edgar had a history of domestic violence. Mother was present at the July 16, 2009 hearing to adjudicate the amended petition. She waived her right to a trial and submitted on the evidence. The juvenile court sustained the amended petition, declared Autumn a dependent of the court, and removed her from mother's custody. The court accorded mother family reunification services and monitored visits, subject to the criminal court's orders. The juvenile court further ordered mother to participate in drug treatment and testing, individual counseling, domestic violence counseling, parenting education, and to submit to a mental health evaluation.

3. Progress review hearings

Mother was present at the September 9, 2009 progress review hearing. She had recently been released from jail and was living in El Monte, although she did not have a stable residence. Mother reported she had not yet enrolled in her court ordered programs because she had no money to pay for them; however, she was attempting to borrow the funds and planned to enroll at the Twin Palms Recovery Center. She had submitted to three random drug tests in July and August 2009, and all of those results were negative. Mother had been unable to visit with Autumn, because the criminal court would not modify its restraining order until she attended parenting classes.

At the October 16, 2009 interim review hearing, the Department reported that mother had enrolled in individual counseling, an alcohol and drug abuse awareness group, self-help meetings, and random drug testing at Twin Palms Recovery Center. Mother had two negative drug tests in September 2009. The juvenile court ordered a mental health evaluation of mother pursuant to Evidence Code section 730, because the Department had been unable to find an agency to provide an evaluation at no cost.

In January 2010, the Department reported that mother's current whereabouts were unknown. The court-appointed mental health evaluator had been unable to contact mother in order to conduct the Evidence Code section 730 evaluation. Mother had also been terminated from her program at the Twin Palms Recovery Center because of absences and noncompliance. Although mother had two negative drug tests on November 4 and December 9, 2009, she failed to appear for a November 20, 2009 test.

4. Six-month review hearing

By February 2010, mother was back in compliance with all of her programs. She had participated in 12 individual therapy sessions, 16 recovery discussion groups, 20 self-help meetings, 15 parenting sessions, and 15 domestic violence program sessions. Mother's substance abuse counselor said that mother was motivated and appeared to have remained sober. Mother had been drug testing regularly and had 10 clean tests.

The criminal court had modified its restraining order to allow mother to have monitored visits with Autumn, and mother had her first visit with the child on January 26, 2010. Two more visits followed, and all of the visits went well.

At the February 22, 2010 six-month review hearing, the juvenile court received a mental health evaluation prepared by its appointed Evidence Code section 730 evaluator, Dr. Ward, who met with mother for three hours on February 12, 2010. Mother told Dr. Ward that she began using marijuana at age 15 but discontinued use while still a teenager. She began using methamphetamine after the birth of her second child, 19 years ago. Mother said she was not a heavy user of methamphetamine, but that she used the drug when she had problems or was depressed. She admitted using alcohol as well but said she had not used drugs or alcohol since Autumn's detention.

Dr. Ward concluded that mother did not have a mental disorder or any serious psychological problems. He opined that mother's behavior on the day of her June 2009 arrest was the result of drug induced psychosis, and that if she avoided drug use, there did not appear to be any major concerns with her ability to care for Autumn.

At the conclusion of the hearing, the juvenile court found mother to be in partial compliance with her case plan and ordered continued family reunification services.

5. Twelve-month review

In May 2010, the Department reported that Autumn had been evaluated for developmental delays and was now receiving services from a regional center. Mother was visiting with Autumn twice a week, and the visits were going well.

Mother had completed 18 parenting education classes and had 10 consecutive clean drug tests. She had been terminated from her domestic violence program, however, because of absences that occurred while mother was attending a relative's funeral.

Mother was now living with her fiancé, Gilbert, who asked to be included in mother's visits with Autumn. Because Gilbert had a criminal history related to substance abuse, the Department's social worker advised him to enroll in parenting classes, individual counseling, and drug testing.

On May 5, 2010, mother filed a section 388 petition requesting unmonitored visits with Autumn. The Department responded by stating it could not recommend unmonitored visits because the criminal court had not lifted its restraining order against her and because the Department could not ensure that Autumn would be safe during the visits in light of Gilbert's extensive criminal drug use history.

In June 2010, mother informed the social worker that she and Gilbert were no longer together because Gilbert did not want to participate in programs. Mother was now living with the maternal grandmother.

Mother had completed 28 parenting classes, 15 individual counseling sessions, 22 recovery discussion groups, and 33 self-help meetings. She had also completed 17 negative drug test results. On June 15, 2010, mother provided a copy of the criminal court's minute order modifying its restraining order to allow her unmonitored visits with Autumn.

At the July 15, 2010, 12-month review hearing, the juvenile court granted mother's section 388 petition and ordered unmonitored visits with Autumn. The court accorded the Department discretion to liberalize mother's visits to include overnight and weekend visits. The juvenile court found mother to be in partial compliance with her case plan and set the matter for a section 366.22 hearing.

6. Further review proceedings

Mother began unmonitored visits with Autumn on July 28, 2010. Because the visits were going well, the Department liberalized mother's visits on August 20, 2010, to include overnight and weekend visits. The first two weekend visits included the maternal grandmother and went well. By the third visit, however, mother became evasive with Autumn's foster mother who had transported the child to and from the visit. Autumn behaved oddly when returned to her foster home after the third weekend visit. On three occasions, she attempted to kiss the foster parents with her mouth open and her tongue protruding. Autumn stopped this behavior after redirection from the foster parents.

After the third weekend visit with Autumn, mother became absent and failed to appear for a drug test. The social worker contacted the maternal grandmother and Edgar

but neither had information regarding mother's whereabouts. The Department recommended that mother's visits be restricted to monitored visits only.

In September 2010, mother's recovery counselor at Twin Palms Recovery Center told the social worker that he was terminating mother from the program for noncompliance. Although mother had almost completed the drug rehabilitation program, she had failed to show up for her last two sessions, and the counselor had not seen her since June. Mother's parenting counselor at Twin Palms reported that mother's attendance at parenting education classes had become sporadic. She was also behind in payments owed to the center.

Mother had had no contact with the Department since August 27, 2010. She had negative drug test results on July 29, August 18, and September 16, 2010, but failed to appear for testing, without explanation, on July 9 and September 3, 2010. She had also failed to reenroll in a domestic violence program.

At a September 30, 2010 hearing, the juvenile court ordered mother to reenroll in a domestic violence program and ordered mother's visits to be monitored. Mother attended monitored visits with Autumn in October. Although Autumn did not run to mother at the outset of the visits, she responded to mother in a positive way after being engaged by mother.

Mother was arrested on November 1, 2010, after an incident that occurred on October 16, 2010. Mother and Gilbert had taken multiple items from a Super Warehouse store and attempted to leave the store without paying for them. As they were exiting the store, a customer service manager walked in front of mother to block her path. The manager told mother and Gilbert to stop because they had items for which they had not paid. Mother walked into the manager, knocking her out of the way, and said "What are you going to do about it?" The manager wrote down the license plate number of the vehicle in which mother and Gilbert drove away, and this information led to their subsequent arrest. Mother was thereafter convicted of theft and was sentenced to 90 days in county jail.

Mother was present at the December 15, 2010 status review hearing. She had been released from jail and was now living with Edgar in Fairfield, California. The juvenile court ordered the Department to provide mother with out-of-county referrals, including referrals for drug testing, if possible. Edgar was also present in court and was appointed counsel. After the juvenile court found him to be an alleged father, Edgar indicated he would be requesting presumed father status.

Autumn was thriving in her current placement. She appeared to be very bonded with her foster parents, whom she referred to as “mommy and daddy.” The foster parents had an approved home study and were willing to adopt Autumn.

On January 28, 2011, mother visited Autumn with Edgar and two of their older children. Autumn was apprehensive at the outset of the visit, but everyone behaved appropriately during the visit. After the visit, Autumn’s foster parents reported that Autumn was angry and irritable and had difficulty sleeping through the night for the next several days.

Mother and Edgar were present at the February 15, 2011 review hearing. Mother presented evidence that she had enrolled in a domestic violence program in Fairfield, California. She asked that the duration of her visits be increased to four hours, as she was now traveling from Northern California to visit with Autumn in Los Angeles. The juvenile court accorded mother two-hour visits twice a week.

By March 2011, mother had been reinstated in the parenting and drug counseling programs at Twin Palms Recovery Center. Mother had completed 49 parenting group sessions and needed three more session to complete the program. Mother’s parenting counselor reported that she had participated appropriately and showed insight into her problems. Mother’s substance abuse counselor reported that mother was in compliance in all areas and appeared willing to apply the skills and methods she had learned. Her estimated date of completion for the drug counseling program was March 29, 2011. The Center for Intervention in Fairfield reported that mother had only one more class to finish in order to complete their domestic violence program, but mother had failed to attend and was not in compliance.

Mother tested negative for drugs on January 28 and March 16, 2011, but missed testing on January 3, February 14, February 16, and March 14. On one occasion, mother told the social worker she could not submit to an on demand test that day because she would miss her ride. Another time, mother said she could not test because she had not been given any paperwork. The social worker had been unsuccessful in arranging for mother to drug test near her home in Fairfield.

7. Section 366.22 hearing

On April 26, 2011, the juvenile court found Edgar to be Autumn's presumed father. The court then proceeded with the contested section 366.22 hearing.

Social worker Sara Mena (Mena) testified on behalf of the Department and confirmed that mother was in compliance with the terms of her probation and had completed her drug rehabilitation, drug testing, parenting education, and individual counseling programs. Mother needed only one more class to complete her domestic violence program. Despite mother's completion of her programs, Mena testified that she did not believe mother had fully resolved her substance abuse problems. Although Mena admitted that she had no evidence of mother's continued drug use, she believed it was unsafe to return Autumn to mother's care in light of mother's criminal history, inconsistent attendance in her programs, and November 2010 arrest.

Mother's recovery counselor, Anthony Provencio (Provencio), testified that he worked as a drug counselor at Twin Palms Recovery Center and had provided 28 hours of counseling to mother. Mother had enrolled in Twin Palms' drug program on September 3, 2009, was terminated on September 22, 2010, reenrolled on March 8, 2011, and completed the program on March 31, 2011. While enrolled in the program, mother attended a weekly recovery discussion group, self-help meetings, and bimonthly individual counseling sessions. All drug testing was done through the Department. Provencio testified that mother actively participated, was receptive to the information presented, and expressed deep remorse for having hurt her family. Mother never appeared to be under the influence of drugs or alcohol.

Provencio acknowledged that mother had not told him about her previous drug-related arrests or about her most recent arrest in November 2010. He also acknowledged that he had had no contact with mother from June 2010 to March 2011, and that her nine-month absence from the program gave him some concern about her future sobriety. Despite mother's prolonged absence from the program, Provencio opined that Autumn would be safe during unmonitored visits with mother because he felt mother had obtained some stability and shown positive signs of growing emotionally and mentally.

Mother's parenting counselor, Arturo Rizo (Rizo), testified that mother had completed a 52-week parenting course at Twin Palms Recovery Center. He said that mother was a very motivated participant in the group parenting sessions, and that she appeared to be making positive changes, but that she was still a work in progress. Rizo said that mother was absent from the parenting program from November 2010 to March 2011 but was allowed to reenroll because she had done well overall. He admitted that mother did not disclose her November 2010 arrest when she returned to the program, and mother's withholding of that information was cause for concern.

Ekerette Essien (Essien), the social worker assigned to the case from July or August 2009 to September 2010, also testified. Essien expressed his belief that mother was using drugs during her absence from her programs because she was evasive and was not drug testing regularly. He admitted that mother did not appear to be under the influence while she was in his presence.

Mother testified on her own behalf and said she first started using drugs when she and Edgar divorced. She said she used drugs for a total of 10 months, and used methamphetamine every other week. She denied using any drugs after the day Autumn was detained.

Mother said she stopped attending her programs in the summer of 2010 because she had no money to travel from Fairfield to Los Angeles. She admitted serving two months in jail following her November 2010 theft arrest. She said her relationship with Gilbert began in April or June of 2010 and lasted approximately nine months. She admitted that Gilbert was the person responsible for her methamphetamine use. Mother

said that she intended to remain living with Edgar and that she was ready and able to have Autumn returned to her care.

After hearing argument from the parties, the juvenile court found that returning Autumn to mother's custody would be detrimental to the child. The court noted that mother had a pattern of arrests, inconsistent drug testing, and sporadic attendance in her programs. She had only recently reenrolled and completed her court ordered programs, and her most recent arrest was in November 2010. The juvenile court found that mother had not made any significant progress toward mitigating the causes necessitating Autumn's placement. The court terminated mother's reunification services and set Edgar's section 388 petition for a hearing on May 25, 2011, and a review of permanent plan hearing on November 8, 2011. This appeal followed.

DISCUSSION

I. Applicable Law and Standard of Review

Section 366.22, subdivision (a) requires the juvenile court at the 18-month review hearing to return a dependent child to the custody of the parent unless the court determines, by a preponderance of the evidence, that returning the child would create a substantial risk of detriment to the child's physical or emotional wellbeing.

In evaluating detriment, the juvenile court must consider the criminal history of the parent subsequent to the child's removal, to the extent that the criminal record is substantially related to the child's welfare or the parent's ability to exercise custody and control of the child. (§ 366.22, subd. (a).) In addition, the court must consider the extent to which the parent participated in reunification services and the efforts or progress the parent has made toward eliminating the conditions that led to the child's out-of-home placement. (*Ibid.*; *In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) The parent's failure to participate regularly and make substantive progress in court ordered treatment programs is prima facie evidence that returning the child to the parent's care would be detrimental. (§ 366.22, subd. (a).)

We review mother's challenge to the juvenile court's finding that it would be detrimental to Autumn to be returned to mother's care under the substantial evidence

standard. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763-764.) Under this standard, we consider the evidence most favorable to the Department and resolve all conflicts in support of the juvenile court's order. (*In re David M.* (2005) 134 Cal.App.4th 822, 828.)

II. Substantial Evidence Supports the Juvenile Court's Findings

Substantial evidence supports the juvenile court's finding that mother was only in partial compliance with her case plan. The record shows that mother's participation in her programs, including random drug testing, was sporadic and interrupted by a nine-month hiatus in which she failed to drug test altogether. During her nine-month absence from the court ordered programs, mother was in a relationship with Gilbert, the person responsible for her methamphetamine use. Mother was with Gilbert during the theft incident that led to her November 2010 arrest and subsequent jail term.

Substantial evidence also supports the juvenile court's determination that mother had not made substantive progress toward eliminating the conditions that led to Autumn's removal from her custody. Mother's methamphetamine use was longstanding. She also had multiple drug-related arrests. She failed, however, to disclose her criminal history to the counselors in her court ordered programs. She also failed to disclose her November 2010 arrest and subsequent incarceration for shoplifting with Gilbert. Even after completion of her programs, mother continued to minimize her substance abuse problem. Mother's testimony at the 18-month review hearing that she did not begin using drugs until her divorce from Edgar conflicted with her previous admission that she began using methamphetamine 19 years ago and with Edgar's statement that mother had been using drugs for nine or ten years before Autumn was detained.

Mother's attempt to discount both the duration and gravity of her substance abuse problem is troubling because her drug use often coincided with aggressive, violent, or psychotic behavior on her part. She was arrested in April 2009 for assaulting Edgar. She was arrested again in June 2009 after a witness saw her putting twigs into Autumn's mouth and covering the child's mouth with her hand. After her arrest for endangering Autumn, mother assaulted another inmate, who required hospitalization for the injuries

mother inflicted. Mother was arrested again in November 2010 after pushing aside a store manager who attempted to stop her from shoplifting.

There is substantial evidence in the record to support the juvenile court's determination that returning Autumn to mother's care would create a substantial risk of detriment to the child's physical or emotional wellbeing.

DISPOSITION

The juvenile court's order terminating mother's reunification services and requiring Autumn to remain suitably placed is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD