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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

ANGELA R., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF VENTURA COUNTY,

Respondent;

VENTURA COUNTY HUMAN SERVICES AGENCY,

Real Party in Interest.

2d Civil No. B242793
(Super. Ct. No. J066742)
(Ventura County)

Angela R. (Mother), appearing in propria persona, challenges an order of the juvenile court bypassing family reunification services and setting a permanent plan hearing regarding her minor child. (Welf. & Inst. Code, §§ 361.5, subd. (b)(13), 366.26, subd. (c).)[1] Because substantial evidence supports the juvenile court's decision to bypass reunification services under section 361.5, subdivision (b)(13), we deny Mother's petition for extraordinary writ.

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

Although Alonzo B. (Father) filed a notice of intent to file a writ petition challenging the same order, he failed to file a petition. We dismiss his writ proceeding as abandoned. (Cal. Rules of Court, rule 8.452(c)(1).)

FACTUAL AND PROCEDURAL HISTORY

On September 4, 2007, Ventura County Human Services Agency (HSA) filed a juvenile dependency petition under section 300 to protect then four-year-old J.B. The petition alleged that Mother had been unable to provide adequate care to the child due to her ongoing substance abuse and anger management issues. When the petition was filed, Mother had at least seven separate drug-related convictions. Mother also had been arrested for willful cruelty to a child and had several battery and vandalism charges. The trial court ordered her to participate in drug treatment as a condition of her probation following convictions on September 17, 2001, and January 14, 2002.

The juvenile court ordered the child detained. At the jurisdiction and disposition hearing on September 26, 2007, the juvenile court declared the child to be a dependent of the court and ordered reunification services for Mother. The court ordered Mother to comply with the case plan developed by HSA, including participation in a substance abuse treatment program, to attend at least three 12-step meetings a week and to submit to regular drug testing.

A few weeks later, Mother was arrested for making terrorist threats. She was released from custody on February 20, 2008, and placed on probation for three years. Upon her release, the juvenile court ordered another six months of family reunification services.

In March 2008, Mother entered a residential drug treatment center and began complying fully with her case plan. At the review hearing on August 25, 2008, the juvenile court ordered placement of J.B. with Mother. A year later, HSA recommended termination of the dependency, reporting that Mother "has maintained her sobriety for almost two years." The juvenile court dismissed the dependency on July 27, 2009, with custody to Mother.

Mother resumed her substance abuse in July or August 2011. On April 3, 2012, HSA filed a second juvenile dependency petition. The petition alleged that on March 23, 2012, Mother was found to have a serious and persistent mental illness which required her to be placed on a section 5150 hold. It further alleged that on March 28, 2012, Mother was arrested for being under the influence of a controlled substance. The police found a drug pipe, lighter and used "baggies" within easy reach of minor J.B., who had brought these items to the attention of police.

The juvenile court detained the child and set a jurisdiction and disposition hearing for May 8, 2012. At Mother's request, the court set the matter for trial. After Mother failed to appear at trial, her attorney submitted the matter.

The juvenile court sustained the petition, bypassed reunification services for both parents and set a section 366.26 hearing to decide whether to terminate parental rights and approve a permanent plan of adoption. In bypassing services to Mother, the court found by clear and convincing evidence that she has a history of extensive, abusive and chronic drug use and has resisted prior drug treatment in the preceding three-year period or has twice failed or refused to comply with an accessible and available treatment program identified in the case plan. On July 30, 2012, Mother gave notice that she would petition for extraordinary relief from the setting order. Father gave the same notice but did not file a petition.

Mother's petition challenges the juvenile court's decision to bypass reunification services based on her substance abuse. She states: "[M]y drug use was in the past, prior to obtaining custody of my daughter in August 2008, and I was a total of four years and one month in sobriety when I picked up again."

We issued a temporary stay of the section 366.26 hearing pending our determination of this petition. At our request, HSA provided supplemental briefing regarding the factual basis for the juvenile court's decision to bypass reunification services under section 361.5, subdivision (b)(13).

DISCUSSION

When a juvenile court's decision to bypass reunification is challenged, we apply the substantial evidence rule. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 382.) "We review the record in the light most favorable to the trial court's order to determine whether there is substantial evidence from which a reasonable trier of fact could make the necessary findings *based on the clear and convincing evidence standard*." (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 694.) "Clear and convincing evidence requires a high probability, such that the evidence is so clear as to leave no substantial doubt." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1426.)

HSA urges us to dismiss Mother's petition as procedurally inadequate. (See Cal. Rules of Court, rules 8.450(c) & 8.452(b).) HSA acknowledges, however, that regardless of any procedural defect, we have discretion to consider the petition "in light of the importance of the rights at stake and the critical state of the proceedings." Indeed, section 366.26, subd. (l)(4)(B) "[e]ncourage[s] the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits." (See *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 398-399 [public policy favors "deciding cases on their merits rather than on procedural deficiencies"].)

"There is a presumption in dependency cases that parents will receive reunification services. [Citation.] Section 361.5, subdivision (a) directs the juvenile court to order services *whenever* a child is removed from the custody of his or her parent *unless* the case is within the enumerated exceptions in section 361.5, subdivision (b). [Citation.] Section 361.5, subdivision (b) is a legislative acknowledgement 'that it may be fruitless to provide reunification services under certain circumstances.' [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 95-96.)

The juvenile court denied reunification services to Mother based on section 361.5, subdivision (b)(13), which allows for bypass if two requirements are met. The first requirement is a finding, by clear and convincing evidence, that the parent has "a history of extensive, abusive, and chronic use of drugs or alcohol." (*Ibid*.) Substantial evidence supports the juvenile court's finding that Mother has such a history. Over the

past 12 years, Mother has had at least eight drug-related convictions. Mother's petition even acknowledges her history of drug abuse.

The second requirement is a finding, by clear and convincing evidence, that the parent "has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible." (§ 361.5, subd. (b)(13).)

The juvenile court found that Mother "has resisted prior treatment" during the three-year period prior to the filing of the petition.[2] This finding does not comply with subdivision (b)(13) because it omits the phrase "court-ordered." As HSA acknowledges, the Legislature amended this subdivision, effective January 1, 2003, to require that the prior drug treatment be "court-ordered," not just voluntary. (Stats. 2002, ch. 918, § 7.)

Prior to 2003, a parent who resumed drug use after voluntarily completing substance abuse treatment could be denied reunification services under subdivision (b)(13). (*Karen H. v. Superior Court* (2001) 91 Cal.App.4th 501, 504-505.) This rule recognized that a parent "'can passively resist [treatment] by participating in treatment but nonetheless continuing to abuse drugs or alcohol, thus demonstrating an inability to use the skills and behaviors taught in the program to maintain a sober life.' [Citation.]" (*Id.* at p. 505; see *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73 ["[W]hile [Mother] has technically completed rehabilitation programs, her failure to maintain any kind of long-term sobriety must be considered resistance to treatment"].) The 2003 amendment to subdivision (b)(13) clarified that the juvenile court may not deny reunification services under these circumstances unless the prior treatment was court-ordered. (Stats. 2002, ch. 918, § 7.)

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[2] The juvenile court also found that Mother twice failed to comply with accessible drug treatment programs in her case plan. HSA concedes in its supplemental brief that this "basis [for bypass] does not apply in this case and was mistakenly put into the proposed findings and orders that were submitted and signed by the court."

HSA contends substantial evidence supports a finding that Mother resisted prior *court-ordered* treatment in the three years before the current petition was filed. We agree. Mother participated in court-ordered substance abuse treatment in 2001 and 2002. In September 2007, the juvenile court ordered her to participate in a drug treatment program as part of her reunification services. Although Mother completed that program, she resumed her drug use less than a year before the petition was filed. Her sister, with whom she lived, stated Mother was fully into a "crystal methamphetamine addiction" before her drug-related arrest in March 2012. Mother's resumption of her drug abuse, even after a period of sobriety, evidences her resistance to prior court-ordered treatment. (See *Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010.) The juvenile court did not err, therefore, in denying reunification services based upon section 361.5, subdivision (b)(13).

DISPOSITION

Mother's petition for extraordinary writ is denied. The temporary stay of the section 366.26 permanent plan hearing is vacated.

Father's writ proceeding is dismissed as abandoned.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J..

YEGAN, J.

Ellen Gay Conroy, Judge

Superior Court County of Ventura

Angela R., in pro. per., for Petitioner.

No appearance for Petitioner A.B.

No appearance for Respondent.

Leroy Smith, County Counsel, Alison L. Harris, Assistant County Counsel, for Real Party in Interest.