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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

K.S.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Real Party in Interest.

B288193

(Los Angeles County
Super. Ct. No. CK74754)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Natalie Stone, Judge. Petition denied.

Robert F. Smith for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Real Party in Interest.

Petitioner K.S. (Mother) is the mother of Justin J., a dependent of the juvenile court. At the 12-month review hearing, the juvenile court terminated Mother's reunification services and set a permanency planning hearing under Welfare and Institutions Code section 366.26.¹ Mother challenges the court's order through a petition for extraordinary relief. She contends there was insufficient evidence supporting the court's order, and the Los Angeles County Department of Children and Family Services (DCFS) failed to provide sufficient reunification services and accommodate her disabilities. We disagree and deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

In 2008, DCFS learned that Mother was dating Luther, who is a registered sex offender. Luther has convictions for, among other things, procurement of a minor under 16 years of age for lewd or lascivious acts (Pen. Code, § 266j), oral copulation by force or fear (Pen. Code, § 288a, subd. (c)(2)), and willful cruelty to a child (Pen. Code, § 273a, subd. (b)). At the time, some of Mother's children were dependents of the juvenile court, and the court ordered that Luther not have any contact with the children. Despite this order, Mother reportedly married Luther S.

In March 2016, DCFS received a referral that Mother had recently given birth to Justin and was living with a registered sex offender. Medical records suggested Luther was present at the hospital when Justin was born and that Mother was living at Luther's parents' home. Mother denied to a DCFS social worker

¹ Unless otherwise noted, all further statutory references are to the Welfare and Institutions Code.

that Luther was Justin's father, and stated she no longer lived at his parents' home.

Around the time Justin was born, Mother had another child, I.M., who was a dependent of the juvenile court and placed in foster care. I.M.—who was then three years old—reported that “Santa Claus” had been at her unmonitored visits with Mother and was the father of her baby brother. When I.M. was shown a picture of Luther, she stated, “that is mama's Santa Claus.”

DCFS detained Justin when he was two months old and placed him in a foster home with I.M. On May 27, 2016, DCFS filed a petition alleging Justin is a person described by section 300, subdivisions (b) and (j).² The petition alleged Mother placed Justin in a detrimental and endangering situation by allowing Luther to have unlimited access to him. It further alleged Mother had reunification services terminated with respect to four of Justin's siblings due to illicit drug abuse, inappropriate discipline, and making inappropriate plans for their care.

In September 2016, the juvenile court sustained the petition and removed Justin from Mother's custody. The court ordered DCFS to provide Mother family reunification services and granted Mother visitation with Justin. The court ordered that Mother submit to on-demand drug testing and attend individual counseling to address domestic violence, child safety, and sex abuse awareness.

In January 2017, a referral was made to a child abuse hotline that Luther was involved in a domestic violence altercation with Mother and J.F., her minor son. J.F. subsequently told a DCFS social worker he had walked in on

² DCFS listed Luther and another man as Justin's alleged fathers.

Luther choking Mother. When J.F. confronted him, Luther grabbed J.F. by the neck and pinned him to a wall.

J.F. reported he had been living with Mother and Luther for four months at the time of the incident.³ Mother previously told DCFS that J.F. had not been living with her during that time period. Mother also denied living with Luther, although she acknowledged communicating with him over the phone.

In August 2017, Mother disclosed during a Child and Family Team (CFT) meeting that she continued to have contact with Luther. Mother indicated she was aware of the negative impact Luther had on her life, but she was unable to stop communicating with him. Mother refused to delete Luther's contact information from her phone, and she did not respond when asked if she would stop having contact with him.

In December 2017, Mother informed DCFS she ended all communications with Luther. At that time, Mother had tested negative on all her drug tests, although she missed two drug test dates. Mother had also missed numerous visitations with Justin.

The court held a 12-month review hearing over the course of two days in February 2018.⁴ Mother testified that she had completed parenting and domestic violence programs, as well as

³ J.F. had previously been removed from Mother's home and placed with a legal guardian. J.F. ran away from the guardian's home and was considered "AWOL" at the time of the incident with Luther.

⁴ The court initially indicated the hearing would be a combined 12-month and 18-month review hearing. The court, however, subsequently referred to the hearing only as a 12-month review hearing.

12 weeks of individual counseling.⁵ Mother further testified that she had not spoken to Luther for a couple of years, and denied stating otherwise at the August CFT meeting. The parties stipulated that J.F. would testify that “all of the stuff about [Luther] is not true.”

At the conclusion of the hearing, the court terminated Mother’s reunification services and set a hearing for the selection and implementation of a permanent plan for Justin. The court found DCFS provided reasonable services to Mother, yet return of Justin to her physical custody would create a substantial risk of detriment to his safety, protection, or physical or emotional well-being. The court further determined that Mother had not made significant progress in resolving the issues that led to Justin’s removal, nor had she demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for Justin’s safety, protection, and health. The court noted that although Mother made progress in her programs and was visiting Justin more regularly, she continued to have contact with Luther and failed to comprehend the danger he posed to Justin. The court also noted that Mother was not credible when she testified to having had no contact with Luther for years.⁶

⁵ Mother testified on February 1, 2018. The reporter’s transcript of that day of the hearing was not included in the record for this writ petition, but it was separately filed in connection with a related appeal in Case No. B288215. We augment the record in this case to include a certified reporter’s transcript of the February 1, 2018 hearing. (Cal. Rules of Court, rule 8.115(a)(1)(B).)

⁶ On the same dates as Justin’s 12-month review hearing, the court held a hearing for the selection and implementation of a

Mother filed a petition for extraordinary relief challenging the juvenile court's order.

DISCUSSION

As best we are able to discern from Mother's briefing, she claims the juvenile court erred by declining to return Justin to her custody and terminating her reunification services at the review hearing held pursuant to section 366.21, subdivision (f). We disagree given there was substantial evidence that she continued to have contact with Luther. Further, the trial court correctly found that DCFS provided reasonable services to Mother.

I. General Legal Principles

"The objective of the dependency scheme is to protect abused or neglected children and those at substantial risk thereof and to provide permanent, stable homes if those children cannot be returned home within a prescribed period of time. [Citations.] Although a parent's interest in the care, custody and companionship of a child is a liberty interest that may not be interfered with in the absence of a compelling state interest, the welfare of a child is a compelling state interest that a state has not only a right, but a duty, to protect." (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307.) "As a general rule, reunification services are offered to parents whose children are removed from their custody in an effort to eliminate the conditions leading to loss of custody and facilitate reunification of parent and child. This furthers the goal of preservation of family, whenever possible." (*In re Baby*

permanent plan for I.M. pursuant to section 366.26. At the conclusion of the hearing, the court terminated Mother's parental rights to I.M.

Boy H. (1998) 63 Cal.App.4th 470, 478; see also § 361.5, subd. (a).)

At the 12-month review hearing, the juvenile court must order the return of the child to the physical custody of his or her parent unless it finds the return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.⁷ (§ 366.21, subd. (f)(1).) If the court does not order return of the child, it may continue the case for up to six months so long as: (1) the parent has made consistent and regular contact and visitation with the child; (2) the parent has made significant progress in resolving problems that led to the child's removal; and (3) the parent has demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for the child's safety, protection, and physical and emotional well-being. (§ 366.21, subd. (g)(1).) Otherwise, the court generally must terminate reunification services and set a section 366.26 hearing to implement a permanent plan for the child. (§ 366.21, subd. (g)(4).) Before the court may terminate services and set a section 366.26 hearing, however, there must be clear and convincing evidence that DCFS provided reasonable services to the parent. (§§ 361.5, subd. (a), 366.21, subd. (g)(4); *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.)

II. There Was Substantial Evidence that Mother Continued to Have Contact with Luther

Mother does not dispute that her continued contact with Luther would be sufficient to support a finding that return of Justin would create a substantial risk of detriment to his safety,

⁷ The standard is the same at an 18-month review hearing. (§ 366.22, subd. (a).)

protection, or physical or emotional well-being. Nor does she dispute that such contact provides a sufficient reason to terminate reunification services and set a section 366.26 hearing. Instead, Mother contends there was no credible evidence that she continued to have contact with Luther and the court's finding to the contrary was premised on "mere speculation." We disagree.

"When the sufficiency of the evidence to support a juvenile court's finding or order is challenged on appeal, the reviewing court must determine if there is substantial evidence, contradicted or uncontradicted, that supports it. [Citations.] Under this standard of review we examine the whole record in a light most favorable to the findings and conclusions of the juvenile court and defer to the lower court on issues of credibility of the evidence and witnesses. [Citation.] We must resolve all conflicts in support of the determination and indulge all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact." (*In re Albert T.* (2006) 144 Cal.App.4th 207, 216.)

There was substantial evidence that Mother had continuing contact with Luther during the reunification period, including evidence that she allowed him to be around her children. The juvenile court removed Justin from Mother's custody in September 2016, in part due to Mother's relationship with Luther and the danger he posed to her children.⁸ Nonetheless, J.F. reported that he and Mother lived with Luther for several months in late 2016 and early 2017. According to J.F., during that time, Luther choked Mother and attacked J.F. when he

⁸ Mother does not dispute that she had a relationship with Luther prior to September 2016.

attempted to intervene.⁹ Despite this, in August 2017, Mother admitted she continued to have contact with Luther, and she refused to remove his contact information from her phone. Although Mother subsequently reported she had cut ties with Luther, the trial court found she was not credible. (See *In re I.J.*, *supra*, 56 Cal.4th at p. 773 [“ ‘ “issues of fact and credibility are the province of the trial court” ’ ”].) Substantial evidence supported the juvenile court’s finding that Mother had continuing contact with Luther

III. DCFS Provided Sufficient Reunification Services and Accommodated Mother’s Disabilities

Mother contends her reunification services were insufficient and DCFS failed to accommodate her disabilities. She primarily takes issue with DCFS’s placement of Justin in a foster home relatively far from her, despite the fact that she cannot drive because of hearing and learning disabilities. She asserts that visits were an “ordeal” and required more than three hours of travel, which made it difficult to maintain a close relationship with Justin. We find no merit to Mother’s contentions.¹⁰

⁹ Mother urges us to disregard evidence of the incident with J.F. because the parties stipulated that J.F. would testify that “all that stuff about [Luther] is not true.” This is essentially an invitation to reweigh the evidence, which we decline. (See *In re I.J.* (2013) 56 Cal.4th 766, 773 [reviewing court does not reweigh evidence when considering a challenge to the sufficiency of the evidence].)

¹⁰ We note that contrary to Mother’s suggestions, the court’s order terminating services was not premised on her failure to attend all visits with Justin, or her failure to have a close

A. Background

When Justin was detained, DCFS placed him in the same foster home as I.M. DCFS considered the caregiver to be stable and willing to provide a long-term commitment to both children. Although the caregiver's address was not disclosed, Mother often traveled to Upland for visitations, which is located in San Bernardino County. At the time, Mother lived in Palmdale.

On a monthly basis, DCFS gave Mother a bus pass and additional funding to cover the cost of public transportation from Palmdale to Upland. DCFS generally provided funds for all scheduled visits for the month, regardless of whether Mother actually attended the visits.¹¹ Between January and May 2017, for example, Mother made 12 visits but received funds for at least 32 visits. Between July and October 2017, Mother made 16 visits but received funds for 28 visits. Of those 16 visits, three took place in the Palmdale area, yet Mother received funds for the cost of transportation to Upland.

In December 2017, a DCFS social worker informed Mother there may be a four-to-six week delay in providing her additional transportation funds.¹² Mother replied that she was unable to

relationship with him. Rather, the primary issue was that Mother continued to have contact with Luther, which posed a danger to Justin.

¹¹ DCFS provided Mother \$33.50 per scheduled visit.

¹² In previous months, the social worker submitted, and DCFS approved, emergency requests for aid to cover the cost of Mother's transportation. Sometime around November 2017, DCFS changed its policy to require approval of a non-emergency request prior to the distribution of additional funds.

attend visits without DCFS funding. The social worker explained that Mother could use excess funds from prior months to cover the cost of transportation during the delay.

At the 12-month review hearing, Mother testified that due to the significant distance between Palmdale and Upland, each visit required a time commitment of anywhere from eight to nine-and-a-half hours. She further testified that DCFS did not always provide transportation funds prior to a scheduled visit, in which case Mother had to pay out of her own pocket. Mother implied this was the reason she frequently missed visits.

B. Analysis

When considering whether DCFS provided sufficient services, “[t]he 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 Misako R.* (1991) 2 Cal.App.4th 538, 547; see also *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164 [the reasonableness of DCFS’s efforts are judged according to the circumstances of each case].) DCFS must make a good faith effort to develop and implement a family reunification plan, which generally will include visitation with the child. (*Robin V. v. Superior Court*, at p. 1164; see *In re Riva M.* (1991) 235 Cal.App.3d 403, 414; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138 [“a normal part of reunification services is visitation”].) “[T]he record should show that the supervising agency 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” (*In re Riva M.*,

at p. 414, italics omitted.) We review the juvenile court's reasonable services finding for substantial evidence (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971), bearing in mind that in "almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect." (*In re Misako R.*, *supra*, 2 Cal.App.4th at p. 547.)

We acknowledge that Justin's placement was a considerable distance from Mother's home and each visit required a substantial time commitment. DCFS, however, had a compelling reason for its choice of a foster home, as it allowed Justin to create and maintain a bond with his sibling, I.M., in a stable environment.

Further, there was substantial evidence that DCFS took adequate measures to ensure Mother was able to attend visits with Justin, despite the distance and Mother's inability to drive. On numerous occasions, Justin's caregiver transported him to locations near Mother's home for visits. When Mother was required to travel to Upland, DCFS consistently provided her sufficient funds to cover the cost of public transportation, which amounted to hundreds of dollars each month. Although there was a significant delay in funding in late 2017, DCFS had provided excess funds in the preceding months sufficient to cover Mother's transportation costs during the delay. In fact, because Mother frequently missed visits, she received at least \$1,000 more from DCFS than required for her transportation. There was substantial evidence that DCFS provided reasonable services under the circumstances and sufficiently accommodated Mother's disabilities.

We also find no merit to Mother's brief contention that the services were insufficient because Justin's case was heard in a Monterey Park courthouse, rather than a Lancaster courthouse. Mother did not raise this issue before the juvenile court, and has therefore forfeited the argument on appeal. (See *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110.) Even if she had not forfeited the argument, Mother fails to explain how the location of the courthouse is relevant to the sufficiency of the services provided by DCFS.¹³

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

BIGELOW, P.J.

We concur:

GRIMES, J.

ROGAN, J.*

¹³ We decline to consider Mother's argument that the trial court failed to adequately consider sibling bonds prior to terminating her parental rights to I.M. This petition concerns only the order terminating reunification services and setting a section 366.26 hearing related to Justin. Mother has a pending appeal of the I.M. order (Case No. B288215), through which she can assert such an argument.

* Judge of the Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.