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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re AYDEN S., a Person Coming Under
the Juvenile Court Law.

MIA A.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN LUIS
OBISPO COUNTY,

Respondent;

SAN LUIS OBISPO COUNTY
DEPARTMENT OF SOCIAL SERVICES,

Real Party in Interest.

2d Civil No. B247099
(Super. Ct. No. JV 39054)
(San Luis Obispo County)

Mia A. (Mother) is the biological mother of Ayden S., born in March 2011, who has been a dependent of the juvenile court since October 7, 2011. Mother seeks writ relief (Cal. Rules of Court, rules 8.452, 8.456), from the juvenile court's order terminating her reunification services and setting the matter for a permanency planning hearing. (Welf.

& Inst. Code, § 366.26.)¹ She contends that the San Luis Obispo County Department of Social Services (the Department) did not provide her with reasonable reunification services and that the order terminating services is not supported by substantial evidence. We deny the writ.

Facts

Ayden was born in March 2011. By October 2011, the Department had received four referrals from law enforcement and extended family members who expressed concern about the infant's welfare and the parents' substance abuse. Among other things, these individuals reported that Mother and Ayden's biological father, Gerald S. (Father), were leaving the infant Ayden with random people without provision for his care, such as diapers and food.

The Department's social workers attempted to visit the family at their apartment at least three times in August and September 2011. Mother and Father evaded the appointments and prevented the social worker from seeing Ayden. They also maintained a chaotic lifestyle that threatened Ayden's physical and emotional well being. On September 3, 2011, Mother was arrested and jailed for assault after three women complained to police that she physically attacked them in their driveway at a mobile home park. In early October 2011, a truck rented in Father's name was abandoned after it crashed into a guardrail. Ayden's paternal grandparents informed respondent that Father fell asleep while driving. He was under the influence of drugs at the time. Mother and Ayden were also in the truck with him. The family was involved in a second single car accident around the same time. Mother denied any involvement in the accident.

Ayden was removed from his parents' home on October 7, 2011. When the social worker and police officers arrived to serve the protective custody warrant, Mother and Father refused to answer or open their locked front door, forcing officers to gain entry using a door ram. Mother was arrested for delaying or obstructing an officer in violation of Penal Code section 148, and the police department recommended that similar charges be filed against Father.

¹ All statutory references are to the Welfare & Institutions Code unless otherwise stated.

Mother has a lengthy criminal history as well as a history with the Department. She has two older biological sons. Both sons were placed in foster care as a result of Mother's drug abuse. The eldest has been adopted by his maternal grandmother; the younger son is in the process of being adopted by his maternal grandfather.

At the detention hearing, Mother testified that she has been drug and alcohol free since August 12, 2009. For eight months of that time, she lived in a sober living house, eventually becoming the house manager. In August 2010, Mother moved out of the sober living home and into an apartment. Ayden was born in March 2011. Although Mother did not drug test at the county testing facility as requested by the social worker, she tested at another facility in July, August and October 2011. Each test was negative for all drugs. On November 15, 2011, Mother tested at the county facility. The results of that test were also negative.

Mother had escalating contacts with law enforcement after Ayden's birth. San Luis Obispo police officers responded to the parents' apartment 13 times between August 8, 2011 and October 9, 2011. One of these contacts concerned a reported theft by Mother, two were welfare checks on Ayden, and the remainder concerned disorderly or suspicious behavior. In November 2011, police responded to eight separate complaints of disorderly conduct at the parents' apartment. Mother testified that many of these calls involved domestic violence between Mother and Father. On November 2, 2011, Mother was arrested for burglarizing a neighbor's apartment and possessing property stolen from the apartment. The neighbors reported to police that a laptop, wallet and cell phone were taken from their apartment during the night on November 1. On November 2, Mother walked into the apartment without their permission and returned the stolen laptop.

Meanwhile, Mother continued to drug test voluntarily at a private facility, on days that she chose. While her drug test results were negative, her behavior, including the many law enforcement contacts, indicated to the social worker that she was still using drugs. The social worker testified at the jurisdiction hearing that Mother's behavior was erratic, she exhibited "disjointed thoughts," paranoia and rapid speech. An intake counselor at the county's drug and alcohol services office was also "very concerned about [Mother's]

behavior and she believes that [Mother] is using" Because Mother was not willing to admit that she was using drugs, however, the counselor would not allow her to participate in group therapy. The social worker described Mother as "very confrontational and uncooperative with [respondent]" She told the social worker that she did not believe respondent had a valid warrant to detain Ayden in foster care and referred to his detention as an "abduction." Mother also refused to participate in a team decision concerning Ayden because "she does not do anything without her lawyer. [Mother] said that the Department will just use whatever she says against her. She said that she feels that the social worker railroaded her. "

The court entered its order taking jurisdiction over Ayden on December 1, 2011. At the uncontested disposition hearing on December 21, 2011, the court ordered reunification services and supervised visits for both parents. Ayden remained in foster care.

The six-month review hearing was scheduled to occur in June 2012. In the interim, Mother failed to comply with her case plan. She refused drug testing, failed to enter into residential treatment and frequently argued with and raged at the social workers and other employees of the Department who were trying to help her and Ayden. In a March 2012 interim review report, the Department noted that Ayden was doing well in foster care but appeared to have difficulty adjusting after visits with Mother. Ayden had to be moved to a second confidential foster placement after Mother discovered the address of his first placement. Although Mother was offered 38 supervised visits with Ayden, she missed 14 and either arrived or left early from another 13 visits.

Mother was back in jail by March 3, 2012, and had no stated release date. While in custody, Mother was diagnosed with bipolar disorder and began taking medication for that condition. Her behavior and attitude showed marked improvement after she began taking the medication.

An April 2012 evaluation of Ayden by a county mental health therapist noted that the then-11 month old Ayden "has had and continues to have, atypical crying behavior. The crying is characterized as escalating within seconds to a panicked, piercing scream. This desperate crying has occurred the moment Ayden sees any food, including adults

eating; when he wakes repeatedly during the night and in the morning and realizes he is alone, and when he is unable to tolerate not having his foster mothers' attention. [¶] Ayden has also shown a consistent hypersensitivity to raised voices." According to the therapist, Ayden had also shown an aversion to physical contact. "He demonstrated a preference to have his bottle held for him at arm's length from his caregiver." The therapist noted that behaviors such as Ayden's are understood to be early expressions of common responses to trauma. "It appears that Ayden's experiences prior to foster care placement have had an extreme and profound effect upon his development and ability to self-regulate."

The Department recommended that Mother's reunification services be terminated because she was incarcerated, had not been complying with her case plan, and refused to participate in residential drug treatment. By mid-May, however, all parties had agreed that Mother's services would be continued and that she would enter a residential treatment program on her release from jail, which was expected to occur on May 29, 2012.

Mother was released from custody on May 29, but did not enter the residential treatment program. Instead, she moved into the same sober living house she had lived in prior to Ayden's birth. She continued, however, to take her medication and appeared to be much calmer. According to the social worker, "Her most recent visits with Ayden (two since being released from jail) now appear to be more beneficial to her and less traumatic to Ayden. He has smiled while sitting in her lap, and also after being kissed by her." In a June 2012 report prepared for the six-month review hearing, the Department again recommended that Mother's reunification services be terminated, based on her failure to comply with her earlier agreement by entering a residential treatment facility. Meanwhile, Mother requested that her case plan be modified to replace the requirement for residential drug treatment with one for out-patient mental health treatment. The trial court granted Mother's request and ordered the parties to develop a new case plan for her. On August 8, the parties filed a new case plan that required Mother to remain drug and alcohol free, comply with the orders of her mental health treatment team, and to obtain suitable housing for herself and Ayden after her graduation from her sober living home.

Mother and Father had a joint supervised visit with Ayden on August 20, 2012. During the visit, Mother and Father began to argue with each other about a car they were sharing. Rather than attending to Ayden's needs, Mother was distracted by the disagreement, made several calls on her cell phone and left the room several times. Ayden became very upset while the argument was going on and when Mother left the room. The visitation supervisor ended the visit early because it was having a negative impact on Ayden. Mother and Father had no more joint visits with Ayden. In September, the court increased Mother's visitation and permitted her two visits per week at her sober living home, supervised by staff at the home.

The 12-month review hearing occurred in February 2013. In a status review report prepared for the hearing, the Department recommended that reunification services for both parents be terminated and that Ayden be moved toward a permanent adoptive placement. The Department acknowledged that Mother had successfully completed her sober living program and obtained employment. It also acknowledged that her visits with Ayden had been more productive after she began taking medication. Its recommendation to terminate services was based on four considerations. First, while Mother had a years' long history of struggling with mental health issues, substance abuse and inappropriate behavior, her stability and sobriety were relatively recent and short lived. Second, her relatives believed Mother should not be given custody of Ayden because she had made little effort to be involved with her two older children and they feared "this is a pattern that will ultimately continue down the road with Ayden." Third, Mother steadfastly maintained her relationship with Ayden's father, even though that relationship is marked by domestic violence, quarreling and substance abuse, all of which are extremely traumatic for Ayden. Finally, Mother continued to be in denial about the circumstances and behavior that led to Ayden's detention, had difficulty taking responsibility for her own actions and "is, therefore, unlikely to make the necessary permanent changes in her behavior to meet the long term needs of her child."

After the evidentiary hearing, the trial court accepted the Department's recommendation and terminated reunification services for both parents. In its ruling, the

court acknowledged that the issues were "complicated" with respect to Mother because the erratic behavior that led to Ayden's removal may have been related to substance abuse, undiagnosed mental illness or both. It also acknowledged that Mother's behavior and attitude had changed since she began mental health treatment. According to the court, "It is true that [Mother] has of late complied with her reunification plan and there is evidence that justifies Ayden's return to her." On balance, however, the court reasoned, the evidence showed that "return would be detrimental to Ayden." Mother remained unable to avoid having arguments, raising her voice, and creating stressful situations and changes in routine while caring for Ayden, all circumstances that were traumatic for Ayden.

In particular, the court noted, the August 20 visit demonstrated that Mother had not addressed all of the issues that led to Ayden's dependency. By the time of that visit, Mother had been taking medication for her mental illness for several months and had made many other positive changes. Nevertheless, she continued to display an "apparent lack of understanding regarding Ayden's unique needs and how to prioritize those needs when faced with other immediate problems. It is disturbing to learn from all who were present at that visit, how the visit broke down and how Ayden's needs were overlooked." The parents had also expressed a desire to stay together, even though their volatile relationship was obviously harmful for Ayden.

The trial court's order terminated reunification services for both parents and scheduled a hearing on the termination of their parental rights for June 19, 2013. Thereafter, Mother filed this writ petition. She contends the Department failed to provide reasonable services or adopt a reasonable case plan to achieve reunification and that the order terminating reunification services is not supported by substantial evidence.

Discussion

Reasonable Services

Typically, when a child is removed from parental custody, the child and parent are entitled to child welfare services to facilitate family reunification. (*In re K.C.* (2012) 212 Cal.App.4th 323, 329; §§ 361.5, subd. (a); 366.21, subd. (g)(1).) The Department is obligated to make a "good faith effort" to provide reasonable reunification services, tailored

to the circumstances of each family and designed to address the conditions that led to the court's exercise of jurisdiction over the child. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.)

"[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been made but was not made in the trial court. [Citation.] This purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293, fn. omitted.) While the court has discretion to excuse a forfeiture and consider an issue not raised in the trial court, that discretion "should be exercised rarely and only in cases presenting an important legal issue." (*Id.*) This is especially true in dependency matters where, because the proceedings "involve the well-being of children, considerations such as permanency and stability are of paramount importance. [Citation.]" (*Id.*)

At each stage in these proceedings, the trial court made a finding that the Department had provided or was providing reasonable reunification services to Mother. Mother never objected to those findings, nor did she raise the failure to provide reasonable reunification services as an objection at the 12-month review hearing in February 2013. Consequently, Mother has forfeited review of this issue.

Had review of the issue not been forfeited, we would nevertheless reject Mother's contention because the Department provided reasonable services to her. From the beginning, Mother's case plan required her to, among other things, participate in drug and alcohol treatment, counseling and random testing, take parenting classes, obtain an assessment from the County's Mental Health Services and participate in counseling as required by the Mental Health Services. These items were included in an interim case plan adopted by the Department in October 2011, four days after Ayden was removed from parental custody. While her initial case plan focused on drug and alcohol treatment and counseling, the case plan was revised in May 2012 and again in July 2012, to reflect Mother's need for mental health treatment. The Department provided Mother with referrals to mental health and substance abuse treatment programs, parenting classes, visitation

supervision and bus passes. These services were reasonably designed to address the issues that led to Ayden's dependency. (*Amanda H.*, *supra*, 166 Cal.App.4th at p. 1345.)

Substantial Evidence

Mother contends the order terminating her reunification services was not supported by substantial evidence. We disagree. As the court found at the 12-month review hearing, Mother had achieved a period of sobriety and had begun to address her mental illness, the primary issues that led to Ayden's dependency. Before late May 2012, however, her entire adult life had been marked by substance abuse, disruptive and sometimes violent behavior, anger, verbal abuse and confrontations with nearly everyone who crossed her path. Exposure to any of these circumstances is extremely harmful to Ayden, who is prone to panic attacks when his routine is disrupted or he hears raised voices. As the court noted, Mother continues to lack insight regarding the negative impact her argumentative and confrontational behavior has on Ayden. On balance, the court concluded, returning Ayden to Mother's custody would be detrimental to him. Substantial evidence supports this conclusion because Mother's sobriety and mental stability were relatively recent compared to her years' long history of substance abuse, mental illness and disruptive behavior.

Disposition

The writ petition is denied.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Linda D. Hurst, Judge
Superior Court County of San Luis Obispo

Frederick F. Fost, for Petitioner

No appearance for Resondent.

Rita L. Neal, County Counsel, County of San Luis Obispo County and Leslie
H. Kraut, Deputy County Counsel, for Real Party In Interest.