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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

I.A., et al., Petitioners, v. THE SUPERIOR COURT OF VENTURA COUNTY, Respondent; VENTURA COUNTY HUMAN SERVICES AGENCY, Real Party in Interest.	2d Civil No. B241073 (Super. Ct. Nos. J066641, J067397, J068587) (Ventura County)

I.A. (Father) and R.A. (Mother) challenge an order of the juvenile court bypassing family reunification services and setting a permanent plan hearing regarding their three minor children. (Welf. & Inst. Code, §§ 361.5, subd. (b)(4), 366.26, subd. (c).)[1] We deny their petitions for extraordinary writ.

FACTUAL AND PROCEDURAL HISTORY

On June 5, 2007, Ventura County Human Services Agency (HSA) detained then 23-month-old I.H. HSA filed a petition alleging neglect under section 300,

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

subdivision (b) because 1) Mother and Father had failed to adequately supervise I.H. and his 11-month-old sibling L.H., who had drowned in a five-gallon bucket left on the floor of the family trailer; 2) Father had admitted to using crystal methamphetamine two days prior to L.H.'s death; 3) Mother had failed to protect the children from Father's substance abuse; and 4) the home was in an unsanitary condition in that it had an overwhelming stench, soiled diapers on the floor, rotten food, bugs and flies, a feces-filled toilet and no running water.

HSA further alleged, under section 300, subdivision (f) that parents had caused L.H.'s death through neglect. The petition alleged that Father was asleep in the home when L.H. drowned in the five-gallon bucket; that a crack pipe was found at the bottom of the bucket; that L.H. had cuts on his fingers; that the home was in an unsanitary condition; and that inadequate supervision by both parents and drug use by Father had contributed to L.H.'s death, placing his sibling at substantial risk of serious physical harm.

Notwithstanding the subdivision (f) allegation, HSA did not seek bypass of reunification services under section 361.5, subdivision (b)(4), because parents were receptive to services and were mourning the death of their child. After parents waived their trial rights, the juvenile court sustained the petition and ordered family reunification services for both parents.

Subsequently, Father tested positive for multiple substances, including alcohol, methamphetamine and cocaine, and was discharged from the Ventura County Behavioral Health Drug and Alcohol Program (ADP) for unsatisfactory attendance and participation. Although Mother complied with her services, she remained in the relationship with Father and was in denial about his substance abuse issues. HSA recommended termination of reunification services to both parents. On July 2, 2008, the juvenile court terminated Father's reunification services, but extended services to Mother by agreement of the parties.

Over the next six months, Mother represented she was no longer in a relationship with Father. Because she was making progress in her case plan, the juvenile

court ordered family maintenance services for her in November 2008. Soon thereafter, HSA received a report that Mother had violated the court's order prohibiting her from supervising I.H.'s visits with Father. HSA filed a section 387 petition, and in February 2009, the court detained I.H. for a second time.

The following month, Mother gave birth to another child, S.A. HSA detained S.A. and filed a petition alleging neglect under section 300, subdivision (b) based on Father's lengthy history of substance abuse, Mother's continued contact with Father, which had led to the removal of S.A.'s sibling, and the termination of Father's family reunification services due to his failure to comply with the case plan. The petition also included an allegation under section 300, subdivision (f) that parents had caused sibling L.H.'s death through neglect, placing S.A. at substantial risk of serious physical harm.

On May 5, 2009, after several days of contested hearings, the court sustained HSA's section 387 petition regarding I.H., terminated Mother's family reunification services and ordered long-term foster care for the child. The court also sustained S.A.'s petition but ordered family reunification services for both parents.

The family situation improved over the next year. Both parents engaged in services and continued to maintain separate residences. In October 2009, the juvenile court ordered family maintenance for Mother and both children and further family reunification services for Father. After HSA recommended family maintenance services for Father in April 2010, the situation began to deteriorate. Parents skipped several therapy sessions for I.H. Father missed six drug tests and the ADP told him he had to undergo an additional twelve weeks of counseling due to absences. Father failed to return to ADP, to take the required drug tests and to complete the therapy for I.H. His individual therapy also was terminated for lack of attendance.

Nonetheless, HSA recommended dismissal of dependency for both children because Mother had fully complied with the case plan and had not allowed Father to move back into the residence. The juvenile court dismissed the case on September 20, 2010, ordering sole physical custody to Mother and supervised visitation for Father.

Four separate referrals occurred after the dismissal -- two for physical abuse and two for general neglect. On December 11, 2011, a visiting social worker discovered that I.H., S.A. and their infant sibling, B.H., were living in conditions similar to those present when their sibling L.H. died. She observed roaches crawling on the walls and floor, substantial clutter inside the trailer and piled-up trash outside, including a broken-up couch with protruding nails and staples. The trailer had no front door, and police found two-year-old S.A. and six-year-old I.A. wandering outside the trailer unsupervised. The children were dirty and were not wearing jackets or shoes. When asked about the lack of supervision, Mother responded: "All the kids around here are always outside near their trailers without adults." She blamed their poor living conditions on the fact that they were "moving." Mother gave the same excuse for the unsanitary and dangerous living conditions that existed at the time of her child's death.

While the social worker was speaking with Mother, Father refused to cooperate. He continually cursed at the police officers and, at one point, sat in his car and turned on the radio full blast. When HSA decided to detain all three children, Father "attempted to go after the [social worker] when three officers tackled him to the floor." He was arrested and charged with being under the influence of a controlled substance and resisting a peace officer.

HSA filed three petitions under section 300, subdivisions (b) and (f), outlining the history of the prior dependency proceedings involving I.H. and S.A. and alleging that "parents have not subsequently made reasonable efforts to treat the problems that led to the previous removal of the child[ren] from the parents." Once again, the petitions included an allegation under section 300, subdivision (f) that parents had caused L.H.'s death through neglect, placing his siblings at substantial risk of serious physical harm.

On December 14, 2011, the juvenile court found a prima facie case on the petitions and placed all three children in foster care. At the subsequent jurisdiction and disposition hearing, HSA recommended that the court take jurisdiction and bypass services for both parents pursuant to section 361.5, subdivisions (b)(4) and (b)(10), and

for Father under subdivision (b)(13). Following the trial on May 2, 2012, the court sustained all counts of the petitions, bypassed reunification services to both parents and set a hearing for August 20, 2012, to decide whether to terminate parental rights and approve a permanent plan of adoption. Mother and Father petition this court for an extraordinary writ vacating the juvenile court's order and ordering family reunification services.

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.)

Bypass of Services to Parents Under Section 361.5, Subdivision (b)(4)

Section 300, subdivision (f) provides that a minor may be adjudged a dependent of the juvenile court if the juvenile court finds, by a preponderance of the evidence, that "[t]he child's parent or guardian caused the death of another child through abuse or neglect." Section 361.5, subdivision (b)(4) permits the juvenile court to bypass family reunification services if the court finds, by clear and convincing evidence, that "the parent or guardian . . . has caused the death of another child through abuse or neglect."

Parents contend that the "abuse or neglect" contemplated by both sections must rise to the degree of culpability encompassed within the concept of criminal negligence, rather than the civil standard of neglect applied by the juvenile court. Shortly after the petitions were filed, our Supreme Court held in *In re Ethan C.* (2012) 54 Cal.4th 610, 627-637, that a finding of criminal negligence is not required under either section 300, subdivision (f) or section 361.5, subdivision (b)(4). In supplemental briefing,

parents concede that *In re Ethan C.* "has answered the question of the degree of negligence needed to sustain an allegation under [these sections]," and that "the degree of negligence can be a breach of ordinary care and need not amount to criminal negligence." Accordingly, the juvenile court applied the proper standard.

Parents further contend that their acts and omissions were not a "direct" or "proximate cause" of their child's death, and that section 300, subdivision (f) and section 361.5, subdivision (b)(4) must be interpreted to include a heightened criminal law standard of causation. *In re Ethan C.* rejected this argument, agreeing with *In re A.M.* (2010) 187 Cal.App.4th 1380, 1387, that a parent "causes" the death of a child when the parent's conduct is a substantial contributing factor. (*In re Ethan C., supra*, 54 Cal.4th at p. 640.) The court explained that "[i]f the actor's wrongful conduct operated concurrently with other contemporaneous forces to produce the harm, it is a substantial factor, and thus a legal cause, if the injury, or its full extent, would not have occurred but for that conduct." (*Ibid.*)

Parents acknowledge this holding in *Ethan C.*, but contend the juvenile court did not find that their actions were a substantial factor leading to the death of their child. We disagree. On July 7, 2007, the juvenile court found the following allegation to be true: "The inadequate supervision by the parents and drug use by the father contributed to the death of the sibling and this child [I.H.] is at substantial risk of serious physical harm." Substantial evidence supports the finding that the wrongful conduct of both Mother and Father "operated concurrently with other contemporaneous forces to produce the harm" to the child. (*In re Ethan C., supra,* 54 Cal.4th at p. 640.)

The child's death occurred because parents left two children under the age of two in a hazardous environment without adequate supervision. The living conditions in the trailer were "deplorable." The social worker reported "[t]here were poopy diapers lying around and there were bugs and gnats. It was so bad it almost made me puke." The trailer had no running water and the toilet was filled with feces. Father, who was asleep when L.H. fell into the five-gallon bucket and drowned, admitted he had recently used crystal methamphetamine. At the bottom of the bucket, authorities found a broken glass

crack pipe that they suspect caused the lacerations on the child's fingers. Mother left the children alone with Father, even though she knew or should have known he was using drugs. Sufficient evidence supports the jurisdiction and bypass findings that parents "caused the death of another child through abuse or neglect." (§§ 300, subd. (f), 361.5, subd. (b)(4).)

Bypass of Services to Mother Under Section 361.5, Subdivision (b)(10)

Section 361.5, subdivision (b)(10) allows the juvenile court to deny reunification services if the court previously ordered the termination of reunification services for a sibling and the parent "has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling . . . ." Under these circumstances, providing additional reunification services "may be fruitless." (*In re Gabriel K.* (2012) 203 Cal.App.4th 188, 195.)

Mother contends the substantial evidence does not support the bypass of services under this subdivision. We disagree. Mother received over three years of reunification and maintenance services, yet was unable to maintain safe living conditions for her children. At the time of the child's death in 2007, the home was both unsafe and unsanitary. The same was true in December 2011, when the children were once again detained. The home was filthy, with roaches and clutter. Outside the trailer was a broken-up couch with protruding nails and staples. Police found two of the children, aged 2 and 6, wandering outside unsupervised. Father, who was under the influence of drugs, was hostile and combative. Sufficient evidence supports the juvenile court's finding that further reunification services would be fruitless.

Bypass of Services to Father Under Section 361.5, Subdivision (b)(13)

Section 361.5, subdivision (b)(13) allows for bypass of reunification services if the juvenile court finds "[t]hat the parent . . . of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and 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." The statute reflects "'a legislative determination that an attempt to facilitate reunification between a parent and child generally is not in the minor's best interests when the parent is shown to be a chronic abuser of drugs who has resisted prior treatment for drug abuse.' [Citation.]" (*In re William B.* (2008) 163 Cal.App.4th 1220, 1228.)

Father admits he has a substance abuse history, but contends he does not have "an extensive, abusive and chronic use of drugs." This contention is not supported by the record. Father was arrested in 1994, 1995 and 2011 for being under the influence of drugs. He acknowledged he began using cocaine at age 20 and started smoking methamphetamine at age 27. He admitted to using methamphetamine two days prior to his child's death in 2007, and that he started using drugs daily after the death. Father claimed he stopped using when he began attending ADP during the first dependency, but he tested positive for alcohol or drugs several times during that dependency. He also acknowledged he was still using drugs during the second dependency, notwithstanding substantial drug counseling and treatment. Father's on-going use of drugs for approximately 16 years, combined with the arrests and failed treatment, support the juvenile court's finding that bypass was appropriate under section 361.5, subdivision (b)(13).

The petitions for extraordinary writ are denied.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Ellen Gay Conroy, Judge

Superior Court County of Ventura

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Robert R. Garcia for Petitioner I.A.

Carlos J. Najera for Petitioner R.A.

No appearance for Respondent.

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