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

In re J.C. et al., Persons Coming
Under the Juvenile Court Law.

2d Juv. No. B285020
(Super. Ct. Nos. 1506315,
1506316)
(Santa Barbara County)

SANTA BARBARA COUNTY
DEPARTMENT OF SOCIAL
SERVICES,

Plaintiff and Respondent.

v.

G.V.,

Defendant and Appellant,

In 164 page “briefs” accompanied by over 450 footnotes G.V. (mother) seeks review of claims that she received ineffective assistance from her trial counsel whom the juvenile court declined to remove, that the court abused its discretion in denying her request for a contested hearing on a proposed

permanent plan and bypassing family reunification services, and that substantial evidence does not support the termination of her parental rights. We decline to revisit her claim that she received ineffective assistance of counsel and the court's refusal to grant her "*Marsden* Motion."¹ We previously rejected these claims in a prior opinion in *G.V. v. Superior Court (In re J.C.)* (Jul. 10, 2017, B281501) [nonpub. opn.]. She has had her day in court and she lost.

Mother appeals from an order terminating her parental rights to eight-year old J.C. and one-year old A.M. (Welf. & Inst. Code §366.26.)² Mother has a history of substance abuse and involvement with the dependency system. Over a decade ago, she lost her parental rights to two older children. We conclude the court did not err in its rulings and that substantial evidence supports the termination of mother's rights. We affirm.

FACTS AND PROCEDURAL HISTORY³

Mother's parental rights to two older children, D.M. and E.D., were terminated in 2005 and 2006, in a prior dependency proceeding arising from mother's drug abuse. Though D.M. and E.D. are not involved in this appeal, mother's failure to reunify with them led directly to the juvenile court's decision to bypass reunification services for her in this case.

¹ *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden*).

² Unlabeled statutory references are to the Welfare and Institutions Code.

³ On January 29, 2018, we took judicial notice of the record in mother's writ petition and this court's unpublished opinion in *G.V. v. Superior Court (In re J.C.)*, *supra*, B281501, which we summarize below.

J.C. was born in December 2009. In April 2013, Santa Barbara County Child Welfare Services (CWS) was alerted that “mother gets high almost every day on methamphetamines [*sic*], and possibl[y] cocaine, in her home.” In September 2013, CWS received the first of numerous reports that J.C. was physically abused. At that time, and again in November 2015, J.C. had bruises on his body; he begged not to be sent home to mother.

A few weeks before A.M. was born in July 2016, mother tested positive for methamphetamine. CWS received additional reports that J.C. was being physically abused. Mother impeded an investigation by refusing to answer the door or telephone calls, and cursed at social workers.

In November 2016, J.C. told a social worker that mother repeatedly slammed him on the floor: his head was bruised, with a swollen bump and a scratch mark. Mother admitted causing J.C.’s injuries. J.C. also said mother had scratched him all over his stomach. CWS filed a dependency petition as to J.C. and A.M. alleging failure to protect, no provision for support, and abuse of a sibling.⁴ The children were detained and placed with their maternal grandparents.

Attorney Jessica Martinez was appointed to represent mother. At the December 2016 detention hearing, the court ordered that J.C. and A.M. remain in out-of-home care, granted mother four hours of supervised weekly visitation, and ordered her to submit to drug testing.

CWS asked the court to bypass services because mother lost her parental rights to D.M. and E.D. (§ 361.5, subd. (b)(10), (11).) Mother had not addressed the issues leading to J.C.’s and

⁴ The children’s fathers are not parties to this appeal.

A.M.'s removal: she recently tested positive for alcohol; ignored the social worker's requests to begin drug and alcohol treatment; delayed her participation in parenting classes and therapy; and demonstrated an inability to control her anger when interacting with CWS and service providers. A therapist reported that mother's behavior indicated substance abuse.

Before the contested jurisdiction hearing, mother requested substitute counsel to replace Martinez. The court denied mother's request at a *Marsden* hearing.

At the jurisdiction hearing, Mother testified that her "drug of choice" is methamphetamine. She claimed 12 years of sobriety yet refused to submit to drug testing. She takes medications for bipolar disorder and depression. She acknowledged missing or arriving late to several of her therapy appointments. Mother denied telling the social worker that she caused injury to J.C.

The juvenile court sustained the allegations in the petition, declared J.C. and A.M. dependents of the court and bypassed reunification services. It found that mother failed to protect the children due to her substance abuse and mental health issues, and rejected her argument that services should be provided because the instant matter and the prior dependency proceeding for E.D. and D.M. are "apples and oranges." The court questioned mother's credibility and described her as "a very poor historian." The court set the matter for a section 366.26 hearing.

Mother petitioned for writ relief, alleging lack of substantial evidence to support dependency jurisdiction and error in refusing to appoint new counsel. We denied the petition in a written opinion, concluding that substantial evidence supported the jurisdictional findings; the court did not abuse its discretion by denying mother's request for substitute counsel; counsel for

mother provided effective assistance; and mother did not show prejudice in any event. (*G.V. v. Superior Court (In re J.C.)*, *supra*, B281501.)

After our opinion was filed, mother renewed her request for new counsel. At a second *Marsden* hearing, the juvenile court relieved Attorney Martinez and appointed new counsel for mother. The new attorney represented mother at the section 366.26 hearing.

Mother was notified that CWS recommended termination of parental rights and implementation of a plan of adoption. CWS reported that J.C. recently completed first grade. His behavior and academic performance improved after he was removed from mother's custody, though he still has tantrums and speech delays. He receives therapy for past trauma and emotional support from his caregivers. He displays behavioral problems after his visits with mother.

CWS reported that the children are likely to be adopted. They live with the maternal grandparents, who adopted their half-siblings, E.D. and D.M. The household also includes the children's adult maternal aunt and uncle. Mother is not allowed in the home. The prospective adoptive grandparents have a life-long bond with the children, are providing a safe and loving home, and are committed to adoption. The children are happy living with their grandparents.

Mother requested a contested section 366.26 hearing. Her request was denied because there was an insufficient offer of proof regarding her relationship with the children.

Mother's visits ceased in June 2017, when she was arrested for domestic violence. The victim obtained a protective order against mother. At the time of her arrest, mother was on

probation for theft offenses; she was remanded into custody. During the reporting period, J.C. objected to visiting mother and threw tantrums afterward. A.M. did not seem to know mother, cried inconsolably during visits, and sought comfort from members of the foster household.

The juvenile court terminated mother's parental rights at the section 366.26 hearing on August 28, 2017, after admitting the prehearing reports and taking judicial notice of all prior findings and orders in the case. The court found clear and convincing evidence that the children will be adopted and identified adoption as the permanent plan.

DISCUSSION

1. Mother's Marsden and Ineffective Assistance Claims Cannot Be Relitigated

Mother seeks to relitigate *Marsden* and ineffective assistance claims this court decided less than a year ago, when she petitioned for extraordinary relief after the juvenile court set a permanent plan hearing. She argues that our opinion should be deemed "a summary denial." We disagree. Our opinion fully resolved mother's claims about trial counsel. Mother cannot relitigate those claims here.

Mother's writ petition required a written decision on the merits. (Cal. Rules of Court, rule 8.452(h)(1).) When a writ petition is decided on the merits, the claims cannot be relitigated in a subsequent appeal. (*In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991 [dismissing an appeal following termination of parental rights because the issues raised in the appeal were addressed in an opinion on the merits of a writ petition challenging an order setting a permanent plan hearing].)

Nor can mother belatedly demand the appointment of counsel to assist with her 2017 writ petition. There is no fundamental right to have appointed appellate counsel in an extraordinary writ proceeding after a section 366.26 hearing is set. (*John F. v. Superior Court* (1996) 43 Cal.App.4th 400, 406-407. See Cal. Rules of Court, rule 8.403(b)(2) [court “may” appoint counsel for an indigent parent in an appeal from an order setting a hearing under section 366.26 if the parent’s writ petition was not decided on the merits]; *Lassiter v. Department of Social Services* (1981) 452 U.S. 18, 31-33 [no automatic due process right to appointed trial counsel in proceedings to terminate the parental rights of an indigent parent].)

Mother does not identify points that we purportedly did not address in our writ opinion. We thoroughly reviewed the record, including the transcript of the *Marsden* hearing, allowed mother to file an amended petition and submit additional evidence, and heard oral argument. We were satisfied that she was properly represented at the jurisdiction hearing. The facts before the juvenile court were: mother lost her parental rights to two older children due to drug abuse; she physically abused J.C.; she continued to use drugs after receiving services in the prior dependency proceeding and tested positive for methamphetamine before giving birth to A.M. Neither substitute counsel nor appellate counsel could alter these facts or the outcome.

2. Denial of a Contested Hearing and Reunification Services

a. Denial of a Contested Hearing

Mother’s request for a contested hearing was meager. It states that J.C. is autistic and has a special relationship with her. She claimed to have ameliorated the extreme behavior

created by her bipolar disorder, and to be testing clean for illicit drugs. She asserted that a guardianship would allow her to nurture her bond with J.C.

Parents have no statutory right to a contested permanent plan hearing. (*In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1123-1124.) The court may require an offer of proof specifically identifying “the actual evidence to be produced, not merely the facts or issues to be addressed and argued.” (*Id.* at p. 1124.) The denial of a contested hearing is reviewed for an abuse of discretion. (*In re Grace P.* (2017) 8 Cal.App.5th 605, 611.)

Here, mother did not specify how she can establish the “beneficial relationship” exception to the termination of parental rights. The exception requires that she show regular visitation and a benefit to the children from continuing the relationship. (§ 366.26, subd. (c)(1)(B)(i).)

Mother’s offer of proof falls short. It does not mention her visitation history. Even if we assume regular visitation until her arrest for domestic violence, her offer to show an emotional bond with J.C. is not of sufficient probative value to require an evidentiary hearing. (*In re Tamika T.*, *supra*, 97 Cal.App.4th at pp. 1121-1122.) Mother did not offer to show that she has a parental relationship with J.C., or that he would suffer detriment if their tie was severed. As for A.M., he was five months old when removed from mother’s care; she does not claim a parental bond with A.M. or detriment to him if their relationship ends. Mother’s alleged control of her violent anger is negated by her arrest for domestic violence. At the time of the hearing, she was incarcerated. She did not offer to show when she would be released from custody or be able to visit or care for the children.

b. Reunification Services

Mother contends that the juvenile court should have construed her request for a contested permanent plan hearing as a request to change its prior order bypassing reunification services. (§ 385.) There was, however, no such request.

There is no basis for mother's assertion that the court should have intuited her desire to revisit its order bypassing services. We previously upheld the court's decision to bypass services, owing to mother's failure to reunify with D.M. and E.D. and her failure to treat the problems that led to the termination of her rights. (§ 361.5, subd. (b)(10), (11).) We cited the court's finding that the prior and current dependency proceedings are not "apples and oranges" but are in fact "oranges and oranges . . . due to substance abuse and/or mental health, a combination of both." (*G.V. v. Superior Court (In re J.C.)*, *supra*, B281501.) We observed that mother made no effort to participate in treatment until the eve of the jurisdiction hearing, and claimed to have 12 years of sobriety, yet tested positive for methamphetamine shortly before A.M.'s birth. She also failed to participate in drug and alcohol treatment in the prior dependency. A bypass of services was warranted.

Nothing in the record suggests that the juvenile court should have altered course and given mother reunification services at the permanent plan hearing. After the petition was filed, she behaved in a hostile and demeaning manner toward social workers and her attorney. She assaulted a domestic partner and was prosecuted. She was incarcerated at the time of the hearing. There is no basis to conclude that mother has turned the corner on substance abuse and mental illness, which led to the termination of her rights to E.D. and D.M.

3. *Termination of Parental Rights*

At the end of her opening brief, mother offers a cursory discussion of the order terminating her parental rights. While acknowledging that the juvenile court reviewed the case records, she maintains that “there is not even a ‘mere scintilla’ of evidence to support the order.” Mother is wrong. The evidence supports the judgment.

Children have a fundamental right to a placement that is stable and permanent. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419.) Bypassing reunification services “constitutes a sufficient basis for terminating parental rights.” (*In re K.C.* (2011) 52 Cal.4th 231, 236-237.) At the permanent plan hearing, the court must terminate parental rights and order the child placed for adoption if it finds that the child is likely to be adopted. (§366.26, subd. (c)(1).) “Adoption is the Legislature’s first choice because it gives the child the best chance at [a full] emotional commitment from a responsible caretaker.” (*In re Celine R.* (2003) 31 Cal.4th 45, 53.) Only “exceptional circumstances” permit a choice other than adoption. (*Ibid.*)

Mother had the burden of proving a significant emotional attachment such that the children would be “greatly harmed” by the termination of parental rights. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853; *In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) She had to show (1) “regular visitation and contact” and (2) “the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) Mother’s brief cites no evidence of a benefit to the children. The record shows, instead, that she is detrimental to the children.

Mother is reported to have physically abused J.C. from the age of four until his removal from her custody at age seven. He

begged social workers not to send him home to her after they examined his bruises. Mother used methamphetamine while pregnant with A.M. and continued to physically abuse J.C. After the children were removed, she resisted treatment and could not control her anger with social workers and service providers.

Following removal, J.C.'s behavior and academic performance improved while in the care of his grandparents. Visits with mother were traumatic for both children. A.M., who barely knows mother, cries during visits and seeks solace from others. J.C. objects to seeing mother and displays behavioral problems after her visits. Mother never progressed beyond monitored visits. She demonstrated her lack of progress by engaging in domestic violence before the section 366.26 hearing.

Mother does not occupy "a parental role." (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108-1109.) None of the variables that affect a parent/child bond favor her: these include the age of the children, the portion of their lives spent in parental custody, interactions between parent and children, and the children's particular needs. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.)

There is no hint in the record that the children would be harmed in any way if their relationship with mother ends. They are thriving with their grandparents, who also adopted their older siblings E.D. and D.M. Mother proposes guardianship so that she can continue to visit the children. However, "[o]nce the court determines adoption is feasible, the less desirable and less permanent alternatives of guardianship and long-term foster care need not be pursued." (*Jones T. v. Superior Court* (1989) 215 Cal.App.3d 240, 249; *In re Jose V.* (1996) 50 Cal.App.4th 1792,

1799.) Mother's opposition to adoption did not overcome the legislative preference for adoption. The record supports the juvenile court's decision to terminate mother's parental rights and free the children for adoption.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Arthur A. Garcia, Judge
Superior Court County of Santa Barbara

Eliot Lee Grossman, under appointment by the Court of
Appeal, for Defendant and Appellant.

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