Filed 3/14/12 Y.A. v. Super. Ct. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

Y.A., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B238122 (Los Angeles County Super. Ct. No. CK85038)

ORIGINAL PROCEEDING; petition for extraordinary writ, Valerie Skeba, Referee. Petition denied.

Patrick S. Aguirre for Petitioner.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Navid Nakhjavani, Deputy County Counsel, for Real Party in Interest.

Y.A. (Mother)[1] challenges the November 30, 2011 order of the juvenile court terminating reunification services and setting a permanency planning hearing pursuant to Welfare and Institutions Code section 366.26.[2] Mother claims that: (1) Mother's due process rights were violated when a report was served on Mother on the day of the November 30, 2011 contested hearing; and (2) Mother made substantive progress on the case plan, entitling her to an additional six months of reunification services.

We deny the petition on the bases that: (1) The untimely service, though error, was harmless; and (2) the juvenile court's orders are supported by substantial evidence.

BACKGROUND

Three minors are the subject of the within petition: daughter Valeria G. (born August 2006), son H.G. (born June 2009), and daughter Camila A. (born February 2011).

On November 8, 2010, the Department of Children and Family Services (DCFS) filed a juvenile dependency petition, alleging Mother failed to provide for Valeria and H.G. and placed them in danger by her abuse of methamphetamine, her mental and emotional problems, and various episodes of domestic violence with her male companion, Jose R.

The November 8, 2010 Detention Report, prepared by Children's Services Worker (CSW) Sandra Remender, states that Valeria and H.G. were placed with maternal grandmother, Maria A. On June 7, 2010, Maria A. had complained to DCFS that Mother had been using drugs, had left Valeria and H.G. with Maria A. for one week without making arrangements for them and had spent "all her welfare money on drugs (crystal meth) instead of her children."

CSW Remender visited the family several times. On July 2, 2010, Mother told CSW Remender that Mother was pregnant, and her boyfriend Jose R. was the father.

---

[1] Neither Jose R., biological father of Camila, nor Jamie G., the alleged father of Valeria and H.G., is a party to the petition. Jose R. participated in reunification services, but continually tested positive for drugs and alcohol in July, August, September, and November 2011.

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

Although Mother told CSW Remender that Mother was willing to submit to drug testing, she did not immediately submit to drug testing but waited several weeks, until July 23, when she tested negative for both alcohol and drugs.

On October 14, 2010, CSW Heidi Cruz Mendez, who had been assigned as a courtesy supervision worker, visited Mother at the home of maternal grandmother (MGM) Maria A. CSW Cruz Mendez reported: "MGM Maria [A.] stated that she was unsure if mother was using drugs but had a suspicion that she was although things at home had been calm in the last week. MGM stated that she is concerned regarding mother and her boyfriend being involved in domestic violence because about 2 weeks ago mother had returned home with a bruised neck, which mother had blamed on her boyfriend.

"Mother Y[.A.] denied any drug use but did inform[] CSW Cruz Mendez of a history of drug use and further stated she last used drugs in April 2010. . . . CSW Cruz Mendez observed mother and MGM argue . . . . Mother admitted to domestic violence with her boyfriend and admitted boyfriend had caused bruising on her neck as he tried to choke her. During [the visit] mother and MGM argu[ed] again, mother became agitated and threatened to abandon her children. Mother further stated that she wanted to kill herself because she was tired of everything. Mother did not have a plan and further stated that she 'just said that' and did not really have any intent to hurt herself. Mother stated that she would wait until after giving birth to do anything to herself. Mother denied using drugs and when she agreed to drug test that day, she also threatened she was going to use drugs after she drug tested. Mother agreed to an upfront assessment being completed and again stated she was not going to harm herself or anyone else."

On October 18, 2010, CSW Remender received notice that Mother had not gone to the drug test scheduled. CSW Remender went unannounced to Mother's residence to ask her why she had not tested. Mother responded that "she didn't go because she was mad. Mother further stated that she had mentioned suicide ideations to the courtesy social worker [Cruz] Mendez only because she was mad and that she did not really have any plans to hurt herself. Mother stated that she and boyfriend were no longer together.

Mother agreed to contact CSW tomorrow so that she could drug test." Mother did not submit to drug testing.

On October 26, 2010, Mother told CSW Remender that she and Jose R. had gotten together, and he had choked her and kicked her in the stomach. He was arrested, and Mother went to the hospital, where she was told that her unborn child appeared to be fine.

At the October 28 visit, "Mother denied any drug use but admitted to drinking a couple of beers over the weekend. CSW asked to see mother's wrist and inquired regarding her cutting [herself]. Mother had a couple of faint line marks on her left wrist. Mother stated that she was not trying to hurt herself but that she does it because she is anxious and [it] helps her feel better when she is stressed."

Although Mother told the CSW that she would submit to drug tests, she again was a "No Show."

On November 3, Mother at first denied using drugs but then admitted to CSW Remender that she had used crystal methamphetamine that morning. That same day, Mother was arrested by the authorities for having threatened maternal grandmother Maria A. with a piece of broken glass. The police officers concluded from her physical condition and her actions that Mother was under the influence of drugs. She refused to submit to a urine test. The officers recovered methamphetamine and drug paraphernalia. Mother was arrested for making "criminal threats, possession of controlled substance and being under the influence of a controlled substance." Maternal grandmother Maria A. sought and obtained a restraining order against Mother.

On November 8, the juvenile court determined that DCFS had presented a prima facie case for detention of Valeria and H.R.; found substantial danger exists to the minors; reasonable efforts had been made to eliminate the need to remove the minors from their home; and continuance in the home was contrary to the minors' interests. The juvenile court ordered the children to be detained with maternal grandmother Maria A., with Mother to have monitored visitation of three hours per visit in a DCFS office.

In the January 5, 2011 Jurisdiction/Disposition Report, Dependency Investigator (DI) Sandra Cardenas reported that she interviewed Valeria, who told Cardenas "that she

has two moms, Mary and Y[.A]." When DI Cardenas asked Valeria about Jose. R., Valeria responded, "He is mean. He fights with my mom. I was there when he hit my mom. My mom called the police. He was fighting with my mom and I was crying. He hit my mom with his hand right here (pointing to her arms). My brother was also there. He was crying too.'"

Mother admitted that she continues a long-term habit of wrist cutting: "'Yeah, I began to cut my wrists when I was 26 or 27 years old. I would do it with my earrings. They were not big cuts (mother laughs). It is not like I would use a knife or anything like that. I do it because it helps me stop my cravings for drugs. I don't think I have mental problems because if I did, the hospital wouldn't have released me.'"

Mother told DI Cardenas that on November 17, 2010, Mother had been hospitalized for one week, stating, "'I was feeling depressed and I said I wanted to die. No, they didn't give me any medicines.'"

On December 7, 2010, Mother was admitted to Tarzana Treatment Centers at its Long Beach location for a six- to nine-month outpatient program, which provided weekly random drug testing as well as classes and group therapy in "Addiction, Relapse Prevention, Process, Family Education (Parenting), Multi-Family (therapy group), and Recovery issues . . . ." Tarzana Treatment Centers additionally provided weekly individual therapy and required its patients "to build a sober support system by attending A.A., N.A., and C.A."

On January 5, 2011, Mother entered a no-contest plea to the petition as to Valeria and H.G. The juvenile court ordered Mother to participate in a program of counseling, including individual counseling on parenting, domestic violence, and substance abuse and to comply with treatment plans. The court further ordered Mother to submit to random alcohol and drug testing.

Mother did not appear for testing on January 18, 2011, or February 18, but did test on January 5 and January 8, with results on those occasions showing no drugs in her system.

Camila[3] was born in the latter part of February 2011 and was placed with maternal grandmother Maria A. Mother tested negative for drugs at the time of the birth.

Maternal grandmother Maria A. sought to reconcile with Mother after Camila's birth, so she moved to terminate the restraining order. That order was terminated on March 1, 2011.

The March 14, 2011 Interim Review Report, prepared by CSW Laura Mejia, states that Mother was not in compliance as she had not provided confirmation of her participation in court-ordered programs and had not secured housing. The report showed that Mother had tested negative for unlawful substances on March 11. CSW Mejia also reported that Mother's monitored visits with the children went very well, with both Valeria and H.G. appearing to enjoy the visits.

On April 10, Mother entered an inpatient treatment center. When CSW Mejia visited Mother the next day, CSW Mejia learned that only substance abuse programming was offered and, thus, advised Mother to find a different program that would offer all the programs required by the juvenile court, including parenting counseling. Mother told CSW Mejia that Mother would re-enroll in the Tarzana Treatment Centers outpatient program. CSW Mejia referred Mother to a local Community Services Assessment Center (CASC), and an April 19 appointment was arranged for Mother. She arrived late and the appointment was rescheduled for April 22. Mother did not appear, explaining that CASC had not contacted her. An appointment was scheduled for a Long Beach location, but Mother reported "she did not feel comfortable with the location or program."

On April 18, Mother entered a no-contest plea as to a petition on Camila. The juvenile court added counseling to address mental health issues to the previous counseling orders.

Mother failed to show for drug testing on April 14, April 25, and May 2.

On May 19, 2011, maternal grandmother Maria A. informed DCFS that she wanted to adopt all three children. Valeria and H.G. had been living with maternal

---

[3] Jose R. was determined to be Camila's presumed Father.

grandmother Maria A. since November 8, 2010, and Camila had been living with maternal grandmother Maria A. since leaving the hospital after her birth.

The October 11, 2011 Status Review Report, which was the first of three reports admitted into evidence at the November 30, 2011 contested hearing, provided the following information to the juvenile court. By July 13, 2011, Mother had still not given CSW Mejia written confirmation of participation in any treatment programs. CSW Mejia made other referrals to Mother. In August, Mother told CSW Mejia that Mother had "given up" and would no longer participate in services. Yet, via letter dated September 9, 2011, Program Assistant Rachel Carrillo informed DCFS that, on August 31, Mother had enrolled in Los Angeles Centers for Alcohol and Drug Abuse (LACADA) outpatient drug treatment program, which offered parenting and substance abuse counseling as well as random drug testing. LACADA required Mother to attend four "activities": "Women's Group," "Recovery Dynamics," "Self Esteem," and "Women's DV Victims." Mother was placed on a waiting list for mental health services. In October, Mother enrolled in individual therapy with Helpline Youth Counseling Center, where she was assigned a therapist who had a bachelor's degree. Concerned that Mother required therapy provided by a licensed therapist, CSW Mejia referred Mother to Centro De Desarollo Familiar for mental health services.

At the October 11 hearing, the juvenile court rejected the request of DCFS to terminate family reunification services and set another hearing for November 30, 2011.

The October 27 "Last Minute Information for the Court," which was the second of three reports admitted into evidence at the November 30, 2011 contested hearing, included a copy of the September 9, 2011 letter of LACADA Program Assistant Rachel Carrillo, confirming and detailing Mother's enrollment.

In the November 30, 2011 Status Review Report, which was the third of three reports admitted into evidence at the November 30, 2011 contested hearing, CSW Mejia stated: "The mother is in partial compliance with court orders at this time. The mother has had over 12 months of reunification services, but has failed to come into full compliance. The mother has had ample time to come into compliance and only until

08/31/11 has enrolled in a substance abuse program. The mother has not taken advantage of the services offered. In 08/11, the mother reported to CSW that she had given up and therefore, was no longer participating in services. It wasn't until 08/31/11, that mother enrolled in an outpatient program. The children have been in placement for over 12 months with maternal grandmother and mother has only been in a substance abuse program for just about 3 months. Additionally, mother has only tested consistently with negative results since 09/21/11. [¶] Mother is currently 6 months pregnant and did not reveal this to the department until recently. DCFS is concerned that mother is pregnant with her 4th child, but has not resolved case issues that brought her to the attention of DCFS. . . . DCFS will continue to monitor mother's progress and complete a child safety assessment upon the baby's birth. [¶] DCFS has not been able to liberalize mother's visits due to her inconsistency in services."[4]

That report incorporated a October 26, 2011 letter of Beatriz Alvarado, Primary Counselor at LACADA, confirming that Mother had been attending LACADA group sessions. Counselor Alvarado listed the name of every group and the number of sessions that Mother had attended for each group, as follows: six sessions of Domestic Violence, seven sessions of Parenting, two sessions of Recovery Dynamics, two sessions of Living in Balance, and four sessions of Self Esteem. Counselor Alvarado stated in the letter that Mother "participates well in group and gives positive feedback to her peers. [Mother] demonstrates positive attitude and good attendance. [Mother] is working on parenting skills as well as domestic violence skills that are being taught in groups."

The report also included a November 28, 2011 letter from Lizbeth Pereyra, Mental Health Counselor at Helpline Youth Counseling, notifying CSW Mejia that Mother enrolled in individual counseling on October 26, 2011, and had participated in four sessions. Because Pereyra was not a licensed therapist, Pereyra closed Mother's case on November 28.

---

[4] Mother reported that Mauricio C. is the father of her fourth child.

The November 30 report contained verification that Mother "failed to show" for drug testing on July 21, August 4, August 16, and September 2, 2011. Mother did submit to drug testing subsequently with results showing no drugs in her system.

That report confirmed that the children were doing well in the home of maternal grandmother Maria A., who maintains that she wants to adopt all three children. Mother continued to have visitation with the children on Mondays and Fridays, monitored by maternal aunt Patricia G. The report showed that Mother lives with maternal aunt Sandra A; Mother is not employed or attending school.

The Status Review Report prepared for the November 30, 2011 hearing was served on Mother on the day of the hearing. At the commencement of the hearing, Mother's counsel stated her appearance. When the juvenile court asked, "Is everybody ready to proceed," Mother's counsel and counsel for DCFS both responded affirmatively. When the juvenile court asked whether there were any objections to the various reports to be received into evidence, Mother's counsel did not object nor did Mother's counsel request a continuance.

At the November 30 hearing, Mother testified that she has had a nine-year history of drug abuse. She told the court that she completed three months of a six-month program at LACADA, which she attended five days per week until sometime in September, when she went to two days per week. She stopped going to the Women's Group and Recovery Dynamics, but still attends groups on "Self Esteem" and "Women's DV for Victims."

When asked at the hearing whether she would be continuing individual therapy with the unlicensed therapist, Mother replied that the unlicensed therapist closed the case, but Mother had an appointment for the next day with someone the social worker had referred to Mother.

Mother testified that during the period of time between the adjudication on Camila's petition in April and the enrollment in LACADA on August 31, she did not attend NA sessions, although aware of NA in January 2011. When asked whether she knew that she did not need be formally enrolled to attend NA meetings, Mother

responded, “I know.” She explained that she did not attend NA because, “I didn’t know that I had to attend NA.” Mother was unable to articulate what triggers caused her to abuse drugs. When asked by the juvenile court whether she had thought about the triggers, Mother responded, “No.”

The juvenile court found that Mother had complied partially with the case plan, but had not made substantial progress as she lacks serious commitment. The juvenile court set forth its findings: “The problem is that mother has not made substantive progress. Mother bounced around from program to program and . . . it’s possible that she was wait listed.

“It’s possible, but I also know that people who are very, very motivated get themselves into programs. There are programs that will make room for parents or somebody if they really need to get into that program and they will hold a bed for that person.

“At the detention hearing, they will have gotten themselves into a program. I think people who are highly motivated can get into programs. I think the problem with mother [is] she is not particularly motivated and . . . she was unable to answer questions which would indicate that she is actually utilizing what she is learning.

“The concept of triggers is very important in substance abuse because some things stimulate substance abuse, . . . [w]hether it’s environmental or certain individuals.

“These things trigger desires to use drugs and people need to identify [them] and so then stay out of those situations.

“Mother is not able to do that basic self-assessment skill[]. She really wasn’t able to give us much information on that at all. I don’t think that LACADA is the appropriate program for somebody who has a nine-year history.

“She needs to have something that is more intense. LACADA is better suited for people who really have a short history of substance abuse, but somebody who has had a long term struggle, I don’t think that it will provide the structure that is needed, and I don’t think that it provides the type of counseling that those people need, and I think it’s reflected in the way that mother has responded to the questions.

"You know, for somebody who has a nine-year history, . . . collecting a certificate is not good enough. They really have to address these issues and I think mother said it best, some bad things have happened to her.

"She needs to deal with those issues and also deal with her substance abuse issues. I don't think that mother can deal with just going to drug counseling. It sounds like it's more drug education. She needs to be in the individual counseling, but in any case, she has not made substantive progress and her compliance has been relatively recent.

"Again, if she [were] able to tell me what she is learning and . . . [t]he education that she is using to change her life, that is different. Even though she had been in a program a few months, I probably would be willing to continue her services.

"I don't think that mother has the commitment that she needs and so she really needs to start taking this seriously.

"The Court finds that the conditions that originally justified jurisdiction under Welfare and Institutions Code [section] 300 still exist.

"The Court finds by a preponderance of the evidence that return of the children to the physical custody of the parents would create a substantial risk and detriment for the children's physical, emotional health and safety.

"There is continuing necessity for the current placement which is appropriate. Mother has partially complied with the case plan, . . . however, it's not significant enough participation to warrant continued services."

The juvenile court terminated reunification services and set a date for the permanency planning hearing.

DISCUSSION

Mother contends that the juvenile court erred in terminating family reunification services and setting a permanency planning hearing. Mother does not seek the return of the children to her care at this time. Maternal grandmother Maria A., with whom the children have been living since first detained, is ready and able to adopt all three children, Valeria, H.G., and Camila.

I

Mother contends, first, that her due process rights were violated because the November 30, 2011 Report was untimely served, having been served on her on the day of the November 30 hearing.

Mother is correct that a 10-day period for service of the report is mandated by statute. (§ 366.21.) Mother cites *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 557, to support her claim that the untimely service constitutes structural error that invalidates the juvenile court's ruling and is per se reversible. A few years after *Judith P.* issued, in 2008, the Supreme Court rejected using the structural error doctrine for dependency procedures that do not provide fundamental protections for parents. (*In re James F.* (2008) 42 Cal.4th 901, 914 [appointment of guardian ad litem for parent in dependency proceedings].) Now, the proper standard for untimely service is harmless error, and it is Mother's burden to show that she was prejudiced by the timing of the service of the November 30, 2011 report. (*In re A.D.* (2011) 196 Cal.App.4th 1319, 1327.)

Mother does not claim that she was prejudiced by the late service, nor can she so claim: Mother had the October 11 and October 27 reports and she testified fully at the November 30 hearing.

II

Mother contends that the reunification period should have been extended for six months to allow her to qualify for reunification by completing the remaining three months of her six-month LACADA program. Mother does not seek the return of the children to her care at this time. Maternal grandmother Maria A., with whom the children have been living since first detained, is ready and able to adopt all three children.

The 12-month period of reunification for Valeria and H.G., who were originally detained on November 8, 2011, expired before the November 30, 2011 hearing. (§§ 361.5, subd. (a)(1)(A), 366.22, subd. (f).) The same dates for the reunification period apply to Camila, who is part of the sibling group with Valeria and H.G. (§§ 361.5, subd. (a)(1)(B)–(C), 366.22, subd. (e).) For all three children, "'services are available

only if the juvenile court finds specifically that the parent has "consistently and regularly contacted and visited with the child," made "significant progress" on the problems that led to removal, and "demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs." [Citation.]' [Citation.]" (*A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1057–1058.)

The juvenile court found that Mother's participation in the case plan was recent. The record amply supports this finding.

Mother did not enroll in a fully compliant program, LACADA, until August 31, 2011, and, as recently as September 2, 2011, Mother failed to submit to drug testing. On January 5, 2011, the juvenile court ordered Mother to participate in individual counseling, but Mother did not enroll in individual counseling until October 26, 2011.

The juvenile court found that Mother's progress was not substantive. Again, the record fully supports this finding. On January 5, 2011, the juvenile court ordered Mother to have individual psychological counseling; at the time of the hearing on November 30, Mother still had not contacted a licensed therapist.

In the petition, Mother states that she accepts that the facts are not in dispute, and goes on to state that the facts show that she was well on her way to eliminating the conditions that led to the detention of the minors. She points out that the domestic abuse ended when she terminated her relationship with Jose R. She claims that her hospitalization in November 2010, during which she expressed suicidal ideation, resulted from despondency over the removal of her children from her care and not from deep-seated emotional disturbance. It was, she states in her petition, "innocuous." But Mother never provided to the social workers a report from any licensed therapist that her suicidal ideation was, as she terms it in her petition, "innocuous."

Mother dismisses the DCFS's characterization of her cutting her wrists and scratching her hands as self-mutilation as "humorous." She casts that scratching as a rational attempt to avoid drug abuse. Again, Mother was not free to make her own decision as to whether she suffered from emotional or mental illness, to judge suicide

ideation as innocuous or her hand scratching as humorous and then delay compliance with the orders of the juvenile court that she seek and obtain individual therapy.

Mother goes on to state that she was unable to comply with the case plan any earlier than she did because of the orders of her obstetrician during her pregnancy with Camila. Mother does not explain the delay from Camila's birth in February 2011 to her enrollment in a case-plan compliant program months later in August. The record shows that Mother participated for a few days in a noncompliant program in April, but failed to follow up with CSW Mejia's referrals to case-compliant programs. It is a significant indication that Mother was not managing her drug problem when she failed to submit to tests scheduled for April 14, April 25, May 2, July 21, August 4, August 16, and September 2, 2011.

Mother further claims that the delay in her enrollment was due to her being on waiting lists for case-compliant programs. The juvenile court remarked that Mother may have been on waiting lists, but she could have been more proactive in finding a program with availability. The record shows that Mother did not provide any written documentation that, prior to August 31, she was on a waiting list for any case-plan compliant program, nor does any DCFS social worker state in a report that Mother asked for help in finding an appropriate program with an immediate opening.

Mother also claims that the juvenile court's focus on her response to its query as to "triggers" for her drug use was inappropriate, in part because she has difficulty with English as her second language. An official Spanish-language interpreter was present at the hearing, and Mother does not state if, or explain how, the translation from English to Spanish and back was in any way faulty.

Mother further asserts in the petition that her understanding of family conflicts as triggers for her drug abuse was clear to the social workers. Mother does not refer to any part of the record to support this assertion.

Mother next addresses the juvenile court's statement that it would have been willing to continue services if Mother had been able "to tell me what she is learning" and about "the education that she is using to change her life." Mother infers, somehow, that

the juvenile court did not read any of the record, but relied solely on her own testimony at the hearing. Of course, the juvenile court was required to consider Mother's testimony, as it was required to consider the entire record before it. Apart from her inference, Mother provides nothing that would overcome the presumption that the juvenile court considered the entire record. (*Briano v. Rubio* (1996) 46 Cal.App.4th 1167, 1173.)

It is doubtful that the completion of the LACADA classes will help Mother to the extent required. The LACADA classes that Mother attends fall short of the comprehensive programming Mother needs. The LACADA classes cover domestic violence, recovery, women's issues, and self-esteem. Even if Mother successfully completed the two remaining classes within the six-month period and had individual therapy, it is highly unlikely that extending services for six months will equip Mother with all the coping skills she will need to refrain from drug abuse, deal with her long-standing mental health issues, avoid relationships with physically abusive or drug- or alcohol-abusing partners, and support and take care of four children.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.