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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

T. R.,

Petitioner,

v.

THE SUPERIOR COURT OF
LOS ANGELES COUNTY,

Respondent;

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Real Party in Interest.

B291171

(Los Angeles County
Super. Ct. No. CK42907)

ORIGINAL PROCEEDINGS in mandate. D. Brett Bianco,
Judge. Petition denied.

Law Office of Dwana Willis and Dwana Willis for
Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, Kim Nemoy, Principal Deputy County
Counsel, for Real Party in Interest.

Children's Law Center and Lucila Chairez for Dependent
Child K.J.

INTRODUCTION

After the most recent 18-month review for six-year-old K.J., the juvenile court found he could not safely be returned to mother T.R.'s care. By this time, K.J. had been a dependent child for five years, and T.R. had received more than three years of family reunification services. The juvenile court terminated services and scheduled a selection and implementation hearing. (Welf. & Inst. Code, § 366.26.)¹ Mother petitions for extraordinary relief. (Cal. Rules of Court, rule 8.452.) Concluding substantial evidence supports the juvenile court's order, we deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

T.R. gave birth to K.J. when she was 16 years old and herself a dependent of the juvenile court. T.R. had begun working with a registered public health nurse specializing in at-risk mothers during her pregnancy, and K.J. lived with her for almost his first year.

K.J. was removed from mother's care the first time when he was 11 months of age, after numerous issues arose related to

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

mother's failure to adequately supervise him.² K.J. remained in an out-of-home placement for approximately five months. During that time, mother's monitored visits went well.

With the recommendation of the Department of Children and Family Services (DCFS), K.J. was returned to mother's care in November 2013. Mother and child were placed together in a group home. This placement gave mother the opportunity to take advantage of daycare services for K.J. The juvenile court ordered mother to participate in individual counseling and complete an anger management program.

This placement lasted approximately six months, but ended after a series of angry outbursts and rule violations by mother. In one incident, mother slammed a telephone on the ground, almost hitting K.J., and then left the room in anger, knocking down an 18-month-old child; neither child was injured. K.J. witnessed mother cursing and yelling at staff. In another incident, mother verbally argued with another teen mother. Again, K.J. was present; staff had to restrain mother.

Mother's behavior improved after these outbursts, but she defied the group home rules by repeatedly returning late. She demonstrated limited insight into her personal responsibility. She resisted staff's instructions that it was her responsibility to pick up K.J. from daycare on time.

In April 2014, mother refused to take K.J. to the hospital after he developed a fever. When the child finally received

² At the jurisdiction/disposition hearing, the juvenile court found K.J.'s father was unwilling and unable to provide him appropriate parental care and supervision. Father is not involved in these proceedings.

treatment, he was diagnosed with bronchitis, an ear infection, and pneumonia.

In May 2014, mother engaged in a physical altercation with another resident. Blows were struck, and mother punched the window and kicked the door to the room the other resident was in; all this occurred in K.J.'s presence.

K.J. was removed from mother's custody in late May 2014. Mother's family reunification plan provided for anger management, parenting classes, and individual counseling.

While K.J. was in foster care, mother completed the anger management course, graduated from high school, enrolled at Los Angeles City College, and got a job with a retail company. Mother expressed a desire to reunify with K.J. and insisted her anger would never affect her child. Mother's interactions with other group home residents and their children were positive.

During this period, however, mother's threats to staff on one occasion prompted them to call the police. She occasionally failed to return home before curfew. She stayed away until late at night on three occasions, prompting staff to file missing person reports twice.

Nevertheless, mother's monitored visits with K.J. went so well that she began unmonitored visits. She was chronically late in returning K.J. to his foster home, however; and the foster mother asked that K.J. be placed elsewhere. In December 2014, K.J. moved to the foster home where he once again resides. K.J. was two years of age; this was his fifth placement.

Mother's disruptive and destructive behavior in her group home, including physical outbursts and running away, continued. The group home discharged her in April 2015.

Although mother consistently visited K.J., she often made last-minute changes to the schedule. The inconsistencies were difficult for the child, and he started acting out when getting ready for scheduled visits.

DCFS reported mother had completed the court-ordered programs, but failed to demonstrate substantive progress or insight. By the time of K.J.'s 12-month review hearing in July 2015, mother had stopped individual therapy. Mother's foster parent asked that she be placed elsewhere.

Despite the ups and downs and the fact that K.J. was under three years of age when detained, the juvenile court did not terminate family reunification services at the 12-month mark, but continued those services and scheduled an 18-month review hearing. During this six-month period, mother continued to arrive late for visits or missed them entirely. Her shift at work ended at 2:00 a.m., and mother sometimes had trouble getting up the next morning. Nonetheless, mother's unmonitored visits were extended to several overnight stays.

At the 18-month review hearing in February 2016, DCFS reported, and the juvenile court recognized, the bond between mother and child. Mother moved into an apartment that could accommodate K.J. (a "parenting unit"), and K.J. was returned to her care under continuing juvenile court supervision.

In July 2016, mother left K.J. home alone around 3:45 a.m. to help a friend. A passerby spotted the child on a street corner, and the police were called. Mother returned at 5:30 a.m., before officers arrived, but they interviewed her. She admitted this was not the first time she had left K.J. alone. DCFS immediately intervened with a "team meeting" to devise a safety plan. Mother agreed not to leave him alone again.

But she did. Three months later, in October 2016, mother left K.J. alone in the apartment around 3:30 a.m. to put gas in her car. She said she was gone no more than 12 minutes, but did not check on K.J. when she returned home. She ate a bowl of cereal and then realized her son was not in the apartment. She went outside to look for K.J. and drove around. Mother waited an hour before reporting the child missing because “she really wanted to find [him] before she had to report it to the police.” Police officers found K.J. at a gas station almost an hour later, in the company of a transient. K.J. explained he woke up alone in the apartment, was afraid, and went to look for his mother.

DCFS detained K.J. and returned him to his previous foster home. K.J. had been in mother’s care for about eight months.

Mother was given a new family reunification plan. It included individual counseling and parenting education for her, play therapy for K.J., and conjoint counseling for them both. The court allowed mother unmonitored visits on the condition she not leave K.J. alone.

Mother went to parenting classes and started individual counseling with a new therapist. The therapist reported mother initially was difficult to work, but improved. Mother’s pattern of varying her visits at the last minute continued. She engaged in inappropriate conversations with K.J., telling him that they would be moving to Canada soon. K.J. worried about mother being alone. At the 12-month review, held in August 2017, the court found mother in moderate compliance with the case plan. Mother was sharing a home with several other former foster youth and was working well with K.J.’s foster parents. Mother continued to attend school full time and often brought K.J. with her. She participated in therapy, but had not found a parenting

course that fit her schedule. DCFS once again authorized overnight visits.

In December 2017, the juvenile court found mother to be in substantial compliance with the case plan. Concluding there was a good probability K.J. could be returned to mother's care if additional time were provided, the juvenile court ordered another six months of family reunification services.

By the time of the 18-month review hearing in June 2018, however, DCFS recommended terminating reunification services and scheduling a selection and implementation hearing pursuant to section 366.26.

The juvenile court conducted a contested 18-month review hearing over a two-day period. The usual DCFS reports were received into evidence, as well a letter from K.J.'s therapy provider and an e-mail from a visitation monitor. Although mother had attended a number of parenting classes, she still had not completed the course. Mother's therapist reported her progress was minimal due to interpersonal conflicts and difficulty implementing effective problem-solving strategies. Mother no longer attended conjoint counseling with K.J. When she had participated, K.J.'s behavior regressed and he would act out.

An incident several months earlier was of particular concern. Mother had taken K.J. to visit her father. When it was time to leave, K.J. resisted mother's efforts to buckle him into his car seat. Mother forcefully buckled him in and hit the child in the stomach or chest with enough force that K.J. said he could not breathe. Mother admitted she struck K.J. multiple times on the buttocks, arm, and chest. Because of K.J.'s anxiety about another visit with mother, the visit scheduled for the upcoming weekend was canceled.

Mother testified. Her current housing situation could not accommodate K.J.; but if he were returned to her care, she would find other housing. Addressing the physical discipline incident, she explained K.J.'s behavior got progressively worse during the visit with his grandfather. She had set aside time during the visit to do K.J.'s homework, but the child did not want to do his homework. She spoke to him privately. She tried five-minute timeouts. Finally, she gave K.J. the choice between doing his homework or going home. He still would not do his homework, so she packed his things. K.J. then started to have a "meltdown," so she put him in a bear-hug and got him out of the house and into the car. During the ensuing tussle to buckle him in, K.J. smacked mother in the face and she swatted him on the arm no more than three times. She then forcibly buckled him in his car seat. Mother said she had never before had a problem like this with K.J. At most, he would cross his arms and tell her he did not want to talk to her.

Mother testified it was difficult, with school and two jobs, to complete the parenting course. Mother said she could retake the parenting course during the summer months when her schedule would be more flexible.

In terms of her weekly individual counseling, mother was working on her tendency to become irritated and agitated. She enjoyed therapy because she likes getting things off her chest. Mother thought her sessions were going well and was surprised to learn her therapist had reported only minimal progress.

In their closing arguments, DCFS asked the court to terminate reunification services. Minor's counsel agreed it would not be safe to return K.J. to mother's care at that time, but was in favor of extending reunification services. Mother's counsel asked

for the child's return to her home and more time for family reunification.

The juvenile court found by a preponderance of the evidence that returning K.J. to mother's physical custody would create a substantial risk of detriment to the child. The juvenile court judge noted that DCFS and the juvenile court "have wanted to give mother every possible opportunity to reunify" and acknowledged mother's progress. Observing that no parent in that department's inventory had received more family reunification services, the juvenile court also stated it expected "to see mother in a different place after four years of quite extensive services"

The juvenile court described mother as "very credible, very intelligent, very articulate." Although mother had learned from the numerous classes she had taken, she still had difficulty applying that knowledge. Having observed mother testify, the juvenile court remarked, "she does demonstrate when questions get tough, she's easily frustrated. You can sense the tension, the frustration. And the court has concerns about how that manifests itself." Regarding the April 2018 incident, the court said that "four years into this intensive process . . . we're still at [t]he point where mother can't control her response to a stressful situation." The court told mother, "[y]ou are a great person, there is no doubt about that. I think you're going to be a good parent. But I think you need to get to the place where you can convince all of us without any hesitation that your anger management issues are under control and that we're in a place where we can say without any real reservations that it would be safe to return the minor to your care. We are just not there, and we're out of

time.” Finally, in terms of an immediate placement, mother did not have housing for herself and K.J.

The juvenile court terminated reunification services. The court set a hearing pursuant to section 366.26 and encouraged mother to continue her progress in the meantime, to demonstrate substantial change at the hearing. The court also ordered that mother’s visits remain monitored, but gave DCFS the discretion to liberalize visitation.

Mother timely filed a notice of intent to file a writ petition. The present petition for extraordinary relief followed. K.J.’s counsel filed a joinder in mother’s petition.

DISCUSSION

Mother contends the juvenile court erred in terminating reunification services. We disagree.

A. Standard of Review and Applicable Law

The juvenile court’s order is reviewed for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762.) We construe the evidence and resolve all evidentiary conflicts in the light most favorable to the juvenile court’s determination. (*In re R.T.* (2017) 3 Cal.5th 622, 633; *In re David H.* (2008) 165 Cal.App.4th 1626, 1633.)

Typically, when a child under the age of three years is removed from a parent, the child and parent are entitled to six months of child welfare services to facilitate family reunification, which may be extended to 12 months. (§ 361.5, subd. (a)(1)(B).) When a child over the age of three years is removed from a parent, the child and parent are typically entitled to 12 months of child welfare services to facilitate family reunification, which may be extended to 18 months. (§ 361.5, subd. (a)(1)(A) & (3)(A).)

Pursuant to section 366.22, within 18 months after a dependent child is originally removed from the physical custody of his parent, a permanency review hearing must occur to review the child's status. At the hearing, "the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a)(1).)

A parent's compliance with the case plan, even if substantial, is not the only factor juvenile courts must consider in deciding whether to return a child to that parent's care. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) Where the parent has complied with the plan, the question "is not, as it were, quantitative (that is, showing up for counseling or therapy or parenting classes, or what have you) but qualitative (that is, whether the counseling, therapy or parenting classes are doing any good)." (*Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.)

Moreover, the detriment justifying continued out-of-home placement need not be the same as the detriment that justified the initial removal. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899-900 ["[I]f returning the child will create a substantial risk of detriment to his or her physical or emotional well-being [citations], placement must continue regardless of whether that detriment mirrors the harm which had required the child's removal from parental custody"].)

B. Substantial Evidence Supports the Juvenile Court's Finding that Returning K.J. to Mother's Physical Custody Would Create a Substantial Risk of Detriment to the Child

By the time the juvenile court terminated mother's reunification services, she had participated in two 18-month periods of family reunification services over the course of four years. During the times K.J. was in mother's care, DCFS supervision continued. Mother improved her parenting skills in many ways over the years. But the juvenile court nonetheless found returning K.J. to mother's physical custody would create a substantial risk of detriment to K.J.'s physical or emotional well-being. Substantial evidence in the record supports this finding.

Despite all the services she received, mother continued to display poor judgment and poor parenting skills. She acknowledged she left K.J. alone in the middle of the night on three occasions, the last time after the dangers of doing so had been fully explained to her. When K.J., at five years of age, resisted her physically, she resorted to physical discipline to quell his disobedience.³

Despite mother's progress and participation in more than three years of family reunification services, substantial evidence supports the juvenile court's finding that returning K.J. to mother's care would create a substantial risk of detriment to his physical or emotional well-being.

³ In addition, DCFS reported mother's continued difficulty hewing to a visitation schedule, problems participating in conjoint therapy with K.J., and inappropriate conversations with K.J.

C. The Juvenile Court Did Not Err in Declining to Extend Reunification Services

Mother also argues the juvenile court erred in declining to give her additional time to reunify. We again disagree.

The juvenile court may continue family reunification services beyond the statutory period under exceptional circumstances that “uniformly involve[] some external factor which prevented the parent from participating in the case plan.” (*Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388.) Examples include the department’s failure to develop a reunification plan (*In re Dino E.* (1992) 6 Cal.App.4th 1768); the parent’s inability to participate in a case plan during a crucial time period due to the parent’s hospitalization (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774); and failure to tailor a reunification plan to the family’s special needs in light of the parent’s particular disabilities (*In re Victoria M.* (1989) 207 Cal.App.3d 1317).

The juvenile court did not find mother failed to participate in the reunification plan. Although she lacked proper housing for K.J. at the time of the hearing, this was not the focus of the court’s findings. Rather, the juvenile court was concerned that mother—despite participating in extensive services over a period of years—had not made enough progress in critical aspects of her parenting. In particular, mother continued to struggle when frustrated or stressed, as exemplified by the seat buckle incident. Mother’s focus on the fact she never received PCIT (parent-child interaction therapy) is misplaced: She participated in years of parenting and anger management classes and individual therapy.

As Courts of Appeal have recognized, “The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it.” (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038 [superseded by statute on other grounds].) “Children should not be required to wait until their parents grow up.” (*In re Rikki D.* (1991) 227 Cal.App.3d 1624, 1632 [disapproved in part on other grounds in *Jerusa V.* (2004) 32 Cal.4th 588].) K.J. has now spent more than four of his six years in and out of foster care. The juvenile court did not err in declining to provide another three months of reunification services.

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.

DUNNING, J.*

We concur:

RUBIN, Acting P. J.

GRIMES, J.

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