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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

In re R.J. et al., Persons Coming Under the Juvenile Court Law.	B278555
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. AYANA W., Defendant and Appellant; R.J. et al., Appellants.	(Los Angeles County Super. Ct. No. DK13426)

APPEALS from an order of the Superior Court of Los Angeles County, Lisa R. Jaskol, Judge. Dismissed.

Terence M. Chucas, under appointment by the Court of Appeal, for Defendant and Appellant Ayana W.

Law Office of Valerie N. Lankford and Valerie N. Lankford, under appointment by the Court of Appeal, for minors.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Ayana M. (mother) and her two children, R.J. (born in February 2013) and Remy J. (born in September 2014), appeal from a juvenile court order made at the six-month review hearing. Mother and the children urge that in addition to granting six months of additional reunification services, the juvenile court also should have made a finding that the Los Angeles County Department of Children and Family Services (DCFS) failed to provide the family "reasonable services." We conclude appellants lack standing because they are not aggrieved, and we therefore dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Detention

R. and Remy are the children of mother and Marco J. (father). In June 2015, and again in September 2015, DCFS received reports that the boys and their half-brother, Logan, were being abused and/or neglected.[1] DCFS interviewed Logan, who reported that mother and father frequently yelled at and hit one another, and that father disciplined Logan by hitting him with a belt or a hand, leaving red marks. The paternal aunt provided similar information, saying that she had seen belt marks on

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[1] Logan was placed with his mother and is not a subject of this appeal.

Logan's body, and that she sometimes had to intervene when mother and father were physically fighting. She also said the parents were violent in front of the children and used drugs with friends in the backyard of the home.

DCFS removed Remy and R. from mother and father on September 14, 2015.

II.
Petition

DCFS filed a petition on September 17, 2015, alleging that mother and father had a history of engaging in violent altercations in the children's presence (a-1, b-1); father physically abused the children's half-sibling, Logan, by striking him with a belt and with father's hands (a-2, b-2, j-1); father has a history of substance abuse, including methamphetamines and cocaine, and is a current abuser of cocaine, marijuana, and alcohol, which renders father incapable of providing regular care and supervision of the children (b-3); and mother is a current user of marijuana, which renders her incapable of providing regular care and supervision of the children (b-4).[2]

At a September 17, 2015 detention hearing, the juvenile court found a prima facie case for detaining the children pursuant to Welfare and Institutions Code section 300, subdivisions (a), (b), and (j).[3]

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[2] An additional allegation, that mother and father created a detrimental home environment by allowing unknown individuals to use illicit drugs in the home, subsequently was dismissed.

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

III.
Jurisdiction/Disposition Hearing

The children were placed with their maternal aunt. In October 2015, mother enrolled in outpatient drug rehabilitation through El Proyecto del Barrio. In November 2015, the maternal aunt reported that mother consistently visited and phoned the children.

On December 7, 2015, the juvenile court sustained the petition.

Mother was discharged from El Proyecto del Barrio in February 2016, after she tested positive for amphetamines and methamphetamines.[4]

The court made a dispositional order on February 24, 2016, finding the children's placement outside the home was necessary and appropriate. The court ordered mother to participate in individual counseling, a full drug/alcohol program with aftercare, on-demand drug testing, a 12-step program, domestic violence counseling, and a victims' support group. Mother was granted regular monitored visitation.[5]

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[4] Between September 2015 and January 2016, mother missed nine drug tests, had one negative drug test, and had three positive tests for marijuana, amphetamines, and/or methamphetamines.

[5] Mother notes that the visitation schedule is not part of the appellate record, but suggests it provided for weekly visits monitored by the maternal aunt.

IV.
Six-Month Review

A. Mother's Progress in Residential Drug Treatment

In April 2016, mother enrolled in Didi Hirsch Mental Health Services Via Avanta Residential Center (Via Avanta), a residential drug treatment program. There, mother tested negative for drugs in May, June, and July, and participated in individual counseling, as well as various recovery, domestic violence prevention, and parenting programs.

Through July 2016, the maternal aunt reportedly brought the children to visit mother each Saturday. The visits initially were monitored by the maternal aunt; subsequently, mother was permitted unmonitored visits at the facility.

On August 1, 2016, mother left Via Avanta. Two days later, she entered His Sheltering Arms (HSA), another residential treatment program. Mother tested negative for alcohol and substance use upon her admission to HSA.

On August 24, mother requested a contested hearing regarding unmonitored visitation. A hearing was set for October 17.

B. Visitation

On September 22, the maternal aunt reportedly told the children's social worker (CSW) she was having difficulty transporting the children from her home in Canoga Park to HSA in Los Angeles, and so was bringing the children for visits every other weekend. The same day, the CSW emailed mother's counselor at HSA as follows: "[I]t has come to my attention that [mother's] sister has been unable to bring the children every weekend to visit due to the distance. The Department has staff that could pick up the children and take them to visits at your

site and monitor the visits. They would only be able to do this during the weekdays. During [an August 16, 2016] meeting, it was clear that your agency does not like to facilitate weekday visits. Is there any period of time during the week that visits can take place?"

The HSA counselor responded on September 28 that, "I have checked with the clinical team regarding the request from you about changing the weekend visits of [mother's children] to weekdays. Per our discussion in CFT [child family team] meeting[,] clinical treatment is daily and weekends are when [child] visits can take place."

On October 7, 2016, the CSW met with mother, advised her of DCFS's difficulties transporting the children to HSA, and asked that mother speak with HSA's administrators about allowing her to visit with the children during the week.

On October 11, 2016, DCFS received a letter from mother's clinical supervisor at HSA. It stated that since mother entered treatment on August 3, the children had been brought to HSA for only one visit. The letter expressed mother's concern that the children "may be experiencing emotional distress as a result of the very interrupted pattern of visits."

The CSW emailed HSA's clinical supervisor on October 11, stating that mother's sister was having difficulties transporting the children for weekend visits, and noting that if visits were permitted during the week, DCFS staff could transport the children and monitor the visits. The email concluded, "These staff members are only available during the weekdays. Is there any way we could get visits to occur during the week so that we could have DCFS staff transport the children?"

On October 13, 2016, DCFS received a 75-day progress letter from HSA. It stated that all of mother's random substance abuse tests had been clean, and mother had participated in 40 hours of 12-step meetings, 13 hours of individual therapy, 14 hours of parenting classes, two hours of domestic violence education, and 36 hours of trauma groups. Further, mother "is in full compliance with all components of her clinical treatment program," "is appropriately engaged in all components of her treatment," and "is making excellent progress in treatment."

On October 17, 2016, DCFS advised the court of the difficulties it was having facilitating visits between mother and the children at HSA. DCFS recommended that mother be permitted unmonitored visits at HSA; alternatively, if mother were permitted to leave her treatment facility on the weekends, the CSW would make arrangements for visits monitored by the maternal aunt.

C. Six-Month Review Hearing (October 2016)

Mother testified at the six-month review hearing that she left Via Avanta because the program permitted visits with children only on weekends. While mother was at Via Avanta, the maternal aunt brought the children for visits every other weekend. During that period, mother had sporadic contact with her CSW. Mother said she did not know why the maternal aunt had begun to bring the children less frequently: "I think it had to do with the issues with the car and things like that that my sister was in, so with that I was trying to get a hold of my [CSW] to see if she would be able to bring them." Mother said the maternal aunt's car had been badly damaged in a car accident, so maternal aunt had to rent a car to bring the children for visits.

Mother testified that during the 75 days since she entered HSA, she had seen her children only once. Mother said she had not seen her children at all in August, but did not contact the CSW because "I understood that maybe my sister was trying to get adjusted or find a route to get there." When she still did not receive any visits in September, mother contacted the CSW "and I told her I . . . haven't been getting any visits, and I wanted to know if there is anything she can do to fix that," but she did not hear back from the CSW. Mother said she had called her CSW "almost at least 20 times," and finally had reached the CSW the prior week. Mother ultimately left a voice mail for the CSW's supervisor, but she did not receive a return call. Mother said that throughout the DCFS case she had had difficulty reaching the CSW.

Kristina Akopian, a psychological assistant at HSA, testified that mother was fully compliant with her program at HSA. It was HSA's policy that family visits could occur on weekends only, so as not to interfere with drug and mental health treatment. With regard to mother's ability to leave the HSA facility to visit her children, Akopian said that after 75 days of sobriety, clients were eligible to get passes to leave the facility, but "those are special privileges, so they are not awarded every time, so for [mother] to be able to visit her children it would be better for it to take place at the facility as opposed to outside because those passes aren't guaranteed every single weekend for her to go out and visit her children." She added that passes were based on a reward system, and while they allowed clients to leave the facility on weekends, such passes were not given on a weekly basis and were not geared towards visits with children.

Akopian testified that other children were transported by DCFS for weekend visits with their mothers. Akopian subsequently acknowledged, however, that she did not know the difference between foster family agency workers and DCFS social workers.

At the conclusion of testimony, counsel for DCFS recommended that mother receive an additional six months of family reunification services. Counsel noted that while she understood mother's frustration with visitation, DCFS was "sort of stuck between a rock and a hard place. The mother can only have visits on weekends, and unfortunately, the Department, itself, cannot facilitate visits on weekends."

The children's counsel argued that the court should make a finding that DCFS did not provide reasonable services, and urged that mother should continue to receive services for an additional six months. Counsel urged that it was "completely unreasonable for the Department to be made aware at a meeting back in August that the only visitation allowed would be on the weekend, and for them to make no other arrangements and be totally unaware – to me, this case strikes me as a social worker who was pretty much hands-off." The children's counsel further suggested that DCFS could have requested special funding to pay a "human services assistant" to take the children to visit mother. Mother's counsel similarly argued that DCFS had not made reasonable efforts, and that mother should be permitted unmonitored visits with the children.

At the conclusion of argument, the court found by clear and convincing evidence that DCFS had made reasonable efforts to return the children home. The court explained: "I . . . agree it would have been ideal for the social worker to request funding for

a [human services assistant] to transport the children. I don't think in this day and age we can expect that kind of out-of-the-box thinking unfortunately. I agree that what happened here is not desirable, but I also don't think it rises to the level of failure to provide reasonable services."

Nonetheless, the court granted mother an additional six months of family reunification services and unmonitored visits at the facility, and it ordered DCFS to determine if the paternal relatives could transport the children for visits or, alternatively, if funding was available to pay HSA workers to facilitate such visits.

Mother and the children filed timely notices of appeal from the October 17, 2016 findings and order of the court.

CONTENTIONS

Mother contends the juvenile court erred by finding DCFS provided her with reasonable reunification services. Mother urges that the juvenile court's reasonable-services finding must be reversed, and she must be granted an additional six months of reunification services. The children join in mother's arguments.

DCFS contends that the juvenile court's reasonable-services finding is not appealable. Alternatively, DCFS urges that substantial evidence supported the juvenile court's finding that it provided mother reasonable services.

DISCUSSION

We begin by addressing—and rejecting—DCFS's contention that the juvenile court's October 17, 2016 findings and order are not appealable. DCFS relies on the Court of Appeal's decision in *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1153 (*Melinda K.*), in which the court held that a no-reasonable-services finding was not appealable. We note, however, that

Melinda K.'s analysis was implicitly disapproved by our Supreme Court in *In re S.B.* (2009) 46 Cal.4th 529, 534. There, the court explained: "It is true that 'one does not appeal from a finding; one appeals from a judgment or from an order that the Legislature has designated as appealable.' [Citation.] *However, review of findings is normally obtained by appeal from the ensuing judgment or order*. (Code Civ. Proc., § 906; *In re Matthew C.* (1993) 6 Cal.4th 386, 396.)" (*In re S.B.*, *supra*, 46 Cal.4th at p. 534.) The high court therefore concluded that the Court of Appeal had erred in dismissing the mother's appeal, noting that the mother had appealed from the juvenile court's " 'order,' " although she asserted error only as to its findings. (*Ibid.*)

In the present case, mother and the children appealed from "the findings *and orders* of the court" entered on October 17, 2016. (Italics added.) The order unquestionably was appealable pursuant to section 395, subdivision (a)(1),[6] and the associated findings therefore are reviewable on appeal from the order. (See *In re Matthew C.*, *supra*, 6 Cal.4th at p. 396 (fn. omitted) ["As a general matter, the Legislature has provided for appellate review of judgments and postjudgment orders *and* any intermediate order or decision which involves the merits or necessarily affects that judgment or postjudgment order, or which substantially affects the rights of a party."].)

Our conclusion regarding appealability is not sufficient to allow us to reach the merits of the juvenile court's reasonable-services finding, however. Instead, we must first consider

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6 Section 395, subdivision (a)(1) provides in pertinent part: "A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment."

mother's and the children's standing to pursue the present appeal. As our Supreme Court has explained: "Not every party has standing to appeal every appealable order. Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person *aggrieved by* a decision may appeal." (*In re K.C.* (2011) 52 Cal.4th 231, 236, italics added.) An aggrieved person, for this purpose, "is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision." (*Ibid.*)

The question before us, therefore, is whether mother's or the children's interests were "injuriously affected" by the reasonable-services finding. As we now explain, they were not.

Section 366.21, subdivision (e) provides that at the six-month review hearing, the court must order the child returned to his or her parents unless the court determines return would be detrimental. If the court determines that return would be detrimental, it shall make additional findings, including "[t]he extent of the agency's compliance with the case plan in making reasonable efforts . . . to return the child to a safe home." (§§ 366.21, subd. (e)(2), 366, subd. (a)(1)(B).) If reasonable efforts have *not* been made, the court "shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or legal guardian" *and* "shall continue the case to the 12-month permanency hearing." (§ 366.21, subds. (e)(2)–(3).)

In the present case, although the juvenile court found the services DCFS provided were reasonable, it nonetheless continued the case to the 12-month review hearing and ordered DCFS to provide the family an additional six months of

reunification services and to consider alternative methods of facilitating visitation. In other words, although the court did not make the *finding* mother sought, it made precisely the *order* to which she would have been entitled had a no-reasonable-services finding been made. As a result, even if we were to agree with mother and the children that mother was not offered reasonable reunification services, we would not reverse any order of the juvenile court because appellants have already obtained the very order to which they claim to have been entitled.

Mother urges that even though her reunification services have been extended for six months, she nonetheless has been prejudiced because she was deprived of the opportunity to develop a continuing bond with her children and to demonstrate her "ability and willingness to be a loving mother to the children." Whatever the merits of this contention, the issue before us is whether mother was prejudiced by *the court's order*, not by DCFS's asserted failure to provide proper reunification services. And as to that issue, there simply is no evidence that mother was injuriously affected by the order. Mother also contends that she has been prejudiced by the reasonable-services finding because at the 12-month hearing she "will have to demonstrate that there is a substantial probability of return in order to access more reunification services." But the "substantial probability of return" standard is not unique to the 12-month hearing—it applies equally at the six-month hearing (§ 366.21, subd. (e)(3)—and mother suggests no reason why a reasonable-services finding at the six-month hearing would prejudice

mother's ability to demonstrate a substantial probability of return at the 12-month hearing.[7]

We caution that nothing we have said should be understood to suggest that the lost opportunities for visits between parents and children are without consequence, or that DCFS appropriately handled the visitation challenges presented by this case. To the contrary, we are extremely concerned about DCFS's failure to ensure regular visits between mother and the children. However, "it is a court's duty to decide ' " 'actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.' " ' [Citation.]" (*In re N.S.* (2016) 245 Cal.App.4th 53, 58.) In this case, even if we were to conclude that mother did not receive reasonable services, we could order nothing more than the six months of additional services already ordered by the juvenile court. We therefore decline to reach the reasonable services question on the merits.

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[7] In *In re T.G.* (2010) 188 Cal.App.4th 687, 693–694, cited by mother, the Court of Appeal found a parent could appeal a reasonable-services finding because the court could not say "that no negative consequences flowed from the court's finding that reasonable services were provided up until the six-month review hearing." In contrast, as we have said, in the present case mother has not identified any negative consequences flowing from the reasonable-services finding.

DISPOSITION

The appeals from the October 17, 2016 order are dismissed.

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EDMON, P. J.

We concur:

LAVIN, J.

BACHNER, J.*

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