Filed 12/20/18 In re M.W. CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re M.W., a Person Coming Under the Juvenile Court Law.	B287752 (Los Angeles County Super. Ct. No. DK18332)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. J.W., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. D. Brett Bianco, Judge. Affirmed.

Patricia K. Saucier, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, and Jeanette Cauble, Principal Deputy County Counsel, for Plaintiff and Respondent, Los Angeles County Department of Children and Family Services.

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The juvenile court exerted dependency jurisdiction over a one-year-old child, removed the child from her parents, and ordered the Los Angeles Department of Children and Family Services (the Department) to provide family reunification services to the parents. The mother argues that the Department did not make "good faith" efforts to provide two of the services ordered by the court—namely, parenting classes and housing assistance. The juvenile court found that the Department *had* made good faith efforts, and its findings are supported by substantial evidence. We accordingly affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts[1]

Jazzienae W. (mother) gave birth to M.W. in April 2015. M.W.'s father is Michael W. (father). M.W. was born with methamphetamines and marijuana in her bloodstream. Mother also tested positive for those substances. At that time, mother was also working for father as a prostitute.

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1 These facts are drawn from our unpublished opinion in a prior appeal from this case. (*In re M.W.*, (Mar. 8, 2018, B280580) [nonpub. opn.].)

II. Procedural History

A. *Jurisdiction and dispositional hearing*

In January 2017, the juvenile court exerted dependency jurisdiction over M.W. on two grounds pertinent to this appeal: (1) M.W.'s positive toxicology screening at birth, and (2) mother's history of drug abuse.[2] Simultaneously, the court removed M.W. from her parents' custody and ordered the Department to offer the parents reunification services. More specifically, the court ordered the Department to offer mother monitored visitation, "parenting and individual counseling," "housing referral" and transportation assistance, and weekly random drug testing with conditions that would trigger completion of a formal drug treatment program.[3]

B. *Six-month status review hearing*

The juvenile court conducted the six-month status review hearing on August 21, 2017.

From January 2017 forward, the Department set and had maintained a schedule for the parents to visit M.W. In April 2017, mother completed the intake assessment for her individual

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[2] The court also exerted jurisdiction on several grounds related to father—namely, (1) his history of substance abuse, and (2) his violence against his uncle.

[3] Both parents appealed: Father challenged the sufficiency of the evidence underlying the court's exertion of dependency jurisdiction, and mother challenged the court's compliance with the Indian Child Welfare Act of 1978 (ICWA) (25 U.S.C. § 1901 et seq.) We rejected father's challenge, but found mother's argument to have merit and ordered a remand for further compliance with ICWA's notice requirements. On remand, mother disclaimed her prior assertions of Indian ancestry.

counseling. Although the social worker assigned to the case explained the individual counseling, parenting and drug testing services to mother and father in late May 2017, mother did not show up for her first counseling session three days later. However, mother did attend subsequent sessions. The counseling therapist indicated that she was "incorporat[ing] parenting skills within the [counseling] session[s]" "using the 'Parents as Teachers' curriculum" in order "to get mother 'in the role of being a parent.'" In mid-June 2017, the social worker explained what mother and father needed to do to obtain "housing assistance through STOP funds" and the deadline for applying for those funds; both parents said they would "try very hard to locate a place and obtain the necessary documents to receive assistance." Father applied for and obtained that assistance; mother did not enroll in the programs necessary to make her eligible for housing assistance, and was still living in various hotels by the time of the six-month hearing. Mother was subject to drug testing; she tested positive for methamphetamine and marijuana in June 2017, and tested positive for marijuana five further times in the next two months.

At the status review hearing, the juvenile court found by clear and convincing evidence that the Department had "complied with the case plan," had provided "reasonable services," and had made "reasonable efforts to return [M.W.] to a safe home." The court ordered reunification services to continue.

Neither parent appealed the juvenile court's orders.

C. *12-month status review hearing*

The juvenile court conducted the 12-month status review hearing on January 5, 2018.

The Department continued the visitation schedule between the parents and M.W. Mother continued to visit, despite moving out of state. Mother was testing positive for drugs or failing to show for drug tests, and had dropped out of her drug program.

At the status review hearing, the juvenile court found that the Department was "providing or offering or making active efforts to provide or offer reasonable services" to the parents. It also found that mother had made only "minimal" "progress . . . toward alleviating or mitigating the causes necessitating" M.W.'s removal. The court ordered reunification services to continue and set the matter for an 18-month status review hearing.

Both mother and father filed notices of appeal.

DISCUSSION

Mother argues that the Department did not provide her the parenting classes or housing assistance originally ordered by the juvenile court, and that the juvenile court's findings to the contrary at the six- and 12-month status review hearings are unsupported.[4] The Department responds that the merits of mother's challenge are not properly before us because she did not appeal the juvenile court's order after the six-month status hearing and because she registered no objection to the Department's provision of these services to the juvenile court.

I. Jurisdiction

Because the various orders issued by a juvenile court after the initial dispositional order regarding a child are separately appealable (Welf. & Inst. Code, § 395), a parent appealing to

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[4] Father also challenged the juvenile court's findings in this regard, but we dismissed his appeal as moot in light of the court's post-appeal order returning M.W. to father's custody.

challenge one post-dispositional order "may not challenge prior orders for which the statutory time for filing an appeal has passed." (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 811.) Thus, because mother did not appeal the trial court's finding at the six-month status review that the Department provided her reasonable services, she may not challenge that finding now. However, because any inadequacies in those services may have "continued well into the . . . 12-month period," we may consider any inadequacies that "spilled over from a prior period and compounded the overall problem with the untimely delivery of services" when considering the court's finding regarding the adequacy of services at the 12-month hearing. (*T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1236, fn. 3.) We accordingly deny the Department's motion to dismiss mother's appeal.

II. Forfeiture

Although a parent does not, by failing to object, forfeit the right to challenge on appeal the sufficiency of evidence supporting *some* of a juvenile court's findings in a dependency case (e.g., *In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1559-1561 [so holding, as to finding of adoptability]), the courts have uniformly held that a parent forfeits the right to challenge on appeal a juvenile court's finding that the Department has provided reasonable reunification services if she does not object. (*Earl L. v. Superior Court* (2011) 199 Cal.App.4th 1490, 1505; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885-886 (*Kevin S.*).) The reason for this rule is simple: If the parent had objected at the time, the court "may well have entered a different" and more responsive order regarding those services. (*Kevin S.*, at p. 886.)

We will nevertheless exercise our discretion to overlook this forfeiture and reach the merits of mother's challenge.

III. Merits

When a child is removed from her parents in a dependency proceeding, the juvenile court is in most cases required to "order the social worker"—here, the Department—"to provide child welfare services to the child" and to her parents. (§ 361.5, subd. (a); see also, § 362, subd. (d) [empowering juvenile court to "direct . . . reasonable orders to the parents . . . of [a] child" in dependency proceedings].) To effectuate this mandate, the court will set forth the services that must be provided to any involved parent in a "case plan." The court is thereafter required to hold periodic status review hearings—typically, at six months and at 12 months after the child's removal from her parents—and, at those hearings, to assess "[t]he extent of the" Department's "compliance with the case plan." (§ 366, subd. (a)(1)(B), § 366.21, subds. (e)(8) [6-month hearing], (f)(1) [12-month hearing].) A court may not keep the removal order in effect unless, among other things, it finds by clear and convincing evidence that the Department has made a "good faith effort" to provide the "reasonable services" previously ordered by the juvenile court. (*Ibid.*; *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594; *Robin V. v. Superior Court* (1995) 33 Cal.App.4th 1158, 1164.) This standard requires that *reasonable* services be *provided*; the Department is not to be faulted if its services are not "the best" services "that might be provided in an ideal world" or if the parent chooses not to avail herself of those services. (*In re T.W.-1* (2017) 9 Cal.App.5th 339, 346.) We review a juvenile court's finding that the Department has made good faith

efforts to provide reasonable services for substantial evidence (*T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1238), and do so by "view[ing] the evidence in a light most favorable to the" juvenile court's findings (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545).

Mother argues on appeal that the Department did not make a good faith effort to provide two types of reasonable services that the juvenile court included in her case plan—parenting classes and housing assistance.

Substantial evidence supports the juvenile court's findings that the Department met its duty with regard to parenting classes because the Department arranged for individual counseling, and a critical component of that counseling was a pre-formulated "parenting skills" "curriculum." Mother raises a number of objections. First, she asserts that the Department's social worker, in a few of its written progress reports, mistakenly indicated that parenting classes were *not* part of mother's case plan because the worker—when spelling out that plan—only listed "individual counseling" and "drug test[ing]," but not "parenting skills." This assertion ignores language in the social worker's other reports noting that mother's "client responsibilities" included "participat[ing] in counseling services on a regular and consistent basis" and that "counseling [is] to include parenting skills." Second, mother contends that parenting skills must be provided to her in a separate class rather than as a component of her individual therapy (in part, mother elaborates, because proof of completion is easier to assess with a separate class). But the court's order did not say as much, no case authority mandates as much, and the Department provided combined services to *both* parents in this case without

any criticism that this was either improper or inadequate. Third, mother argues that nothing in the record confirms that the therapist stuck with her plan to incorporate parenting skills into the therapy. By the same token, nothing indicates she departed from her plan, and substantial evidence review requires us to view the evidence in the light most favorable to the juvenile court's ruling. Lastly, mother asserts that her non-attendance at therapy was due to scheduling problems *by the therapist*. The record does not support this assertion, as the only scheduling problem identified by the therapist was the inability to meet once a week; mother's failure to attend is an entirely separate matter that has nothing to do with the therapist's availability or the Department's efforts.

Substantial evidence also supports the juvenile court's findings that the Department met its duty with regard to housing assistance because the social worker told mother and father what they needed to do to apply for housing assistance and advised them of the pertinent deadlines. What is more, mother and father expressed their understanding of these instructions by promising, at the time, to "try very hard" to "obtain the necessary documents to receive [that] assistance." Mother raises two objections to the Department's efforts. First, she argues that she remained homeless or living in various hotels. However, the record suggests that this was not due to any failings by the Department, but instead due to mother's failure to take the steps necessary to obtain housing assistance, steps the social worker explained to her. Second, mother suggests that the social worker's notation in a report that mother was not eligible for housing assistance because she had not applied for General Relief somehow means that the social worker did not inform mother

what she needed to do to get housing assistance. This suggestion ignores that the social worker explained what was needed and that the explanation was sufficient for *father* to take the necessary steps and obtain housing.

DISPOSITION

The order is affirmed.

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_____, J.
HOFFSTADT

We concur:

_____, P. J.
LUI

_____, J.
CHAVEZ