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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KERRY K.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

LOS ANGELES DEPARTMENT
OF CHILDREN AND FAMILY
SERVICES et al.,

Real Parties in Interest.

No. B276263

(Los Angeles Super. Ct.
No. DK08650)

ORIGINAL PROCEEDINGS; petition for extraordinary writ.

Daniel Zeke Zeidler, Judge. Denied.

Law Offices of Katherine Anderson and Jennifer Pichotta for
Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Peter Ferrera, Principal Deputy County Counsel, for Real Party in Interest Los Angeles County Department of Children and Family Services.

Children's Law Center of Los Angeles, CLC1, Ronnie Cheung, and Minhquan Nguyen for Real Party in Interest Emily S.

Kerry K. (mother) seeks extraordinary writ review of an order terminating family reunification services and setting a termination of parental rights hearing. (Welf. & Inst. Code, § 366.26.)¹ Mother contends substantial evidence does not support the dependency court's finding that the Los Angeles County Department of Children and Family Services (Department) provided reasonable services to promote reunification. She further contends that the court abused its discretion in denying her request to continue family reunification services. Lastly, mother challenges the court's visitation order as an unlawful delegation of judicial power. We reject all of mother's arguments and deny the petition.

FACTUAL AND PROCEDURAL HISTORY

On December 6, 2014, the Department responded after receiving a referral alleging that mother attempted suicide by overdosing on pills and was being transported to the hospital. Mother's children, Emily S. (born in January 2000) and Eric S.² (born in February 1999), were being held at the police station. Mother and Eric S., Sr. (father) have been involved in an acrimonious divorce since 2010. The children

¹ All statutory references are to the Welfare and Institutions Code, unless otherwise stated.

² Eric is not at issue in this writ petition.

stated that they hated their father. The caller opined that the children “may be parentified.”

A social worker responded to the police station to investigate the reported allegations. The police received a call that day from father, who reported mother had called him saying she had taken many pills and hung up the phone. Father called mother back but she did not answer. Father then called the police because he was very concerned about mother and the children’s well-being.

When a police officer responded to the family home, Emily initially stated that mother had gone for a walk. The officer subsequently located mother hidden in the attic and she appeared to be “drunk and high.” When paramedics arrived to the home, mother was “belligerent, yelling and screaming at them.” Mother was transported to the hospital and placed on a 72-hour psychiatric hold. The children were subsequently detained by the Department and placed in foster care.

Emily told the social worker that she lied to the police because she did not want to get mother in trouble. Emily denied ever seeing mother drink. Father told the social worker that mother is an alcoholic and has attended multiple alcohol programs but has always relapsed. Father further stated that mother has manipulated the children and pitted the children against him. Father reported the family law court granted mother sole physical custody of the children. Mother admitted to the social worker she had taken five Vicodin pills with a bottle of wine and has a history of alcohol abuse. She explained that she had been stressed out due to the divorce and drank to release the tension. Mother was aware that drinking alcohol and ingesting Vicodin could

kill her. She also admitted that she was hospitalized for suicidal thoughts in 2008.

On December 10, 2014, the Department initiated dependency proceedings on behalf of Eric and Emily. The petition alleged that mother has a history of mental and emotional problems, including suicidal ideation and a suicide attempt. Additionally, mother has a history of substance abuse and is a current abuser of alcohol and prescription medication. The petition further alleged that father is unable to provide parental care and supervision of the children.

At the detention hearing, the court ordered that the children remain detained from mother's custody. The Department was ordered to refer mother to weekly random and on-demand drug and alcohol testing. Both children were to be referred to individual counseling immediately. The court further ordered mother to have monitored visits at least weekly with the Department's discretion to liberalize visits.

Mother participated in intensive out-patient counseling and alcohol treatment, and repeatedly tested negative for alcohol and illicit drugs. When the social worker asked mother to be more supportive toward the children in opening dialogue with father, mother became irate and claimed "no one wants to listen to the children." The Department reported that the children were "emotionally enmeshed" with mother such that their attitudes were "intimately linked to their mother's opinion." Mother refused to encourage the children to participate in conjoint therapy with father.

The court sustained the petition at the February 17, 2016 jurisdiction hearing. The court then proceeded to disposition and declared the children dependents, removed them for the parents' custody, and ordered family reunification services. The court ordered mother to attend a substance abuse treatment program with aftercare and undergo random and weekly on-demand drug and alcohol testing. Both mother and the children were ordered to attend individual counseling to address case issues. The court further ordered mother to have monitored visits by a Department approved monitor at least one a week. Additionally, mother was ordered to "not discuss father or her discontentment over divorce issues with the children or within earshot of the children."

Mother continued to actively participate in her substance abuse program and test negative for illicit drugs and alcohol. Mother did not have any visits or phone calls with Emily. Instead, mother sent her angry emails after Emily told her she liked her school, new friends and is comfortable in her foster home. In these emails, mother told Emily she needed to lie to the Department in her favor. Mother told Emily "not to go against her and told her she is selfish and self-centered." If Emily refused to lie, mother told her she would not speak with her anymore. With Emily's permission, the Department provided the emails to the court.

At the May 12, 2015 progress hearing, the court ordered monitored visitation with Emily at the Department's office, and that mother is to not have phone calls or any electronic communication with the children. However, the Department reported that Emily refused to

have any visits with mother. The Department also reported that mother tested positive for alcohol on May 14, 2015 after a relapse over Mother's Day weekend.

The court continued the six-month hearing to October 27, 2015, in part, to allow for the Department to arrange visits for mother with Emily in a therapeutic setting. Emily continued to refuse to have any contact with her mother despite the court order and the encouragement of her foster parents and the Department. On September 14, 2015, the Department spoke with Emily's therapist who stated that it would be difficult to recommend Emily to have conjoint therapy or therapeutic visits because Emily is adamant about not wanting to have counseling or visit with her mother. On October 13, 2015, Emily wrote a long statement that she did not want to return home to mother because mother had put her through "a lot of emotional abuse [by calling her] names such as 'slut,' 'whore,' 'stupid,' 'worthless,' 'selfish,' 'fat' and a 'bitch.'" Emily became depressed and began to cut herself because she "felt that was the only way to release my pain." Moreover, mother blamed Emily for the family being in the "system" and Eric being in foster care. She believed mother is not going to change. Mother admitted to her previously she was taking her classes and therapy as a joke, and she was faking her way through them. Another reason Emily did not want to return home to mother was because of her alcohol problems. Emily admitted her previous foster mother would allow mother unauthorized overnight visits, and on many of those visits, mother would pick Emily up while intoxicated. Emily also wrote that she saw beer and wine at mother's home during visits.

At the six-month hearing on October 27, 2015, the Department's counsel argued that it made reasonable efforts to provide services to the parents, but mother hampered the social worker's efforts by refusing to communicate with the social worker except by email. Emily refused to have "any contact whatsoever with her mother and has been refusing to attend conjoint therapy." Mother's counsel argued that the Department has not made a reasonable effort to facilitate conjoint counseling between Emily and mother. Counsel also argued that mother completed her drug program in July 2015, but the social worker was delayed in facilitating drug testing for her until September 2015. Emily's counsel stated that mother relapsed at the same time she was sending inappropriate emails to Emily. She noted mother appeared to be under the influence during the review period and was going through the motions of her treatment. She also noted that Emily does not want to have any visits with mother. The court found that returning the children to the parents would place them at risk and continued the order for the children's suitable placement. The court could not find that reasonable services have been provided to mother to reunify with Emily. Therefore, the Department was to continue to provide family reunification services. The court further found that "visitation for the mother with Emily would be detrimental." The court ordered mother to have no further contact with Emily pending further order by the court. Lastly, the court ordered a psychological evaluation of the family pursuant to Evidence Code section 730.³

³ The Department contends that mother filed a motion requesting

The court continued the 12-month hearing to March 23, 2016. At the hearing, the court indicated its tentative ruling was for the conjoint counseling to occur once it was recommended by Emily's therapist, with the Department maintaining monthly contact with the therapist. Mother's counsel asked that conjoint counseling with Emily begin immediately. Emily's counsel agreed with the court's tentative ruling, and noted Emily's history of self-harm following prior conjoint therapy sessions. The Department's counsel agreed with the court's tentative ruling. The court could not find that reasonable efforts and services were provided to mother to reunify.⁴ The court modified mother's drug and alcohol testing to be on-demand. The court then ordered the Department to maintain weekly contact with Emily's therapist regarding starting conjoint counseling. The court ordered Emily to be in conjoint counseling with mother, father and/or Eric as soon as recommended by her individual therapist.⁵

this court to augment the record to include the 730 Evaluation. No such motion was made before this court.

⁴ The court made a nonspecific finding that the Department did not provide mother reasonable services, but a fair reading of the record supports this finding with respect to the services provided to mother to reunify with Eric. Prior to the 12-month review hearing, mother's counsel filed a motion for sanctions based on the Department's failure to follow court orders related to mother and Eric, and mother's counsel asked for a finding of no reasonable services "for the same reasons" she filed the motion. Mother's counsel did not specifically claim any failure of services with respect to Emily.

⁵ The court's order did not appear on the minute order.

On March 29 and again on April 5, 2016, the social worker attempted several times to make contact with Emily's therapist at Foothill Family Services throughout the day. The social worker left a voicemail message on both dates but received no response. On April 13, 2016, the social worker spoke with Emily's therapist on the phone to inquire about Emily's progress and to discuss possible conjoint therapy with father. The therapist stated she did not feel comfortable making a recommendation and that therapists at Foothill Family Services usually do not make recommendations.

On April 18, 2016, the social worker spoke again with Emily's therapist, who was adamant she could not make a recommendation regarding Emily starting conjoint therapy with father or Eric. The therapist stated that Emily has informed her that she does not want to attend therapy with father or Eric due to feeling uncomfortable, nervous, and anxious. Emily has expressed many negative feelings when conjoint therapy is brought up. The therapist opined that discussing conjoint therapy with Emily is taking time away from the sessions working on Emily's own individual mental health needs.

On April 22, 2016, the social worker visited Emily's foster home. The foster parents informed the social worker that they had moved Emily to Hillsides for therapy as the previous therapist was not being of any assistance to Emily and was not able to make a recommendation regarding conjoint therapy. On April 27, 2016, the social worker spoke with a staff member from Hillsides and inquired about conjoint therapy. The staff member stated that Emily's intake had not occurred, therefore, no recommendation was available at that time.

On April 14, April 21, May 3, and May 9, 2016, the social worker attempted to make contact with a “Santa Anita therapist to inquire about individual and conjoint therapy,” but received no response.

On May 6, 2016, the social worker spoke to a staff member at Hillsides regarding Emily’s therapy. The staff member stated that an intake was scheduled to take place within the next two weeks and that Hillsides makes recommendations based on the readiness and feelings of the child. Therefore, Hillsides would support Emily’s ultimate decision. On May 24, 2016, Emily was assigned a therapist at Hillsides.

At the 18-month review hearing on June 14, 2016, the Department reported that Emily continued to refuse to have contact with mother. The court issued its tentative ruling to terminate reunification services for the parents and set a hearing under section 366.26. Mother’s counsel asked the court to grant mother further reunification services, because mother had not received reasonable services to reunify. Mother’s counsel argued the social worker failed to ask Emily’s therapist about conjoint counseling with mother, because the Department’s report indicated the social worker only inquired into conjoint counseling with father. The Department’s counsel contended that it made reasonable efforts to provide reunification services. Emily’s counsel argued that Emily “continues to feel negative and self-harming thoughts at the idea of making contact with her biological family. At this time I think it is futile to force Emily to do something that is not only against her will, but that actually sets her back mentally and emotionally.” Emily’s counsel joined the Department’s recommendation to terminate reunification services. The court found

reasonable services had been provided to the parents to reunify with Emily. The court then terminated family reunification services and stated, “While I am not especially happy with the fact that the conjoint counseling has never been in place, I think there is only so much people can do when you have an older teenager not ready to and refusing to participate in the conjoint counseling.”

DISCUSSION

Reasonable Services

Mother contends the dependency court erred in finding that reasonable services had been provided when it terminated her reunification services. Specifically, mother contends that the Department failed to initiate conjoint counseling between herself and Emily. We disagree.

The Department must show by a preponderance of the evidence that reasonable services have been provided. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 595.) We review the court’s finding of adequate services under the substantial evidence standard of review. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971.) In applying that standard, “we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.) The

pertinent inquiry is whether substantial evidence supports the finding, not whether a contrary finding might have been made. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.)

“In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.” (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) The Department must make a good faith effort to provide reasonable services “responding to the unique needs of each family.” (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) “[T]he record should show that the [Department] identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained reasonable contact with the parents during the course of the service plan, and made reasonable efforts to assist the parents in areas where compliance proved difficult” [Citation.]’ [Citation.]” (*In re T.G.* (2010) 188 Cal.App.4th 687, 697.)

There is substantial evidence that the Department’s efforts to initiate conjoint counseling for mother with Emily, while ultimately unsuccessful, were reasonable given the circumstances. On September 14, 2015, the social worker spoke with Emily’s therapist about conjoint counseling or visitation with mother. The therapist stated it would be difficult to recommend Emily to have conjoint therapy or therapeutic visits when Emily is adamant about not wanting to have counseling or visit with mother. The therapist also stated that therapy was voluntary and she could not force Emily to participate. In

a letter dated October 13, 2015, Emily explained mother's emotional abuse as a longstanding problem that led to Emily to depression, suicidal thoughts, and cutting herself to release her pain. At the six-month review hearing, the Department reiterated that Emily refuses to have "any contact whatsoever with mother" and has been refusing to attend conjoint therapy. The court found that visitation with mother was detrimental and mother is to have no further contact with Emily. However, on March 23, 2016, the court ordered the Department to maintain weekly contact with Emily's therapist regarding conjoint counseling, and ordered Emily to be in conjoint counseling with mother, father and/or Eric as soon as recommended by her individual therapist.

Contrary to mother's assertion, the social worker acted with proper diligence in maintaining contact with Emily's therapist on a weekly basis. When the social worker spoke to the Emily's therapist, the therapist stated that she did not feel comfortable making a recommendation regarding conjoint therapy. When the social worker spoke to the therapist again the therapist was adamant about not making a recommendation. However, the therapist ultimately found that discussing conjoint therapy with Emily is taking time away from the sessions working on Emily's own individual mental health needs. Emily subsequently switched to a therapist at a new agency as the previous therapist was not being of any assistance to Emily and was unable to make a recommendation. The social worker immediately contacted the new agency, inquiring about conjoint therapy. In the meantime, the social worker contacted an alternative therapist in Santa Anita to inquire about individual and conjoint therapy on four

occasions, but received no response. The social worker was then informed that an intake with Emily would soon take place with the new agency, and the new agency was willing to make recommendations about conjoint counseling based on the readiness and feelings of the child.

At time of the 18-month review hearing, Emily had refused contact with mother for over a year. The Department had followed the court order to maintain weekly contact with Emily's therapist regarding conjoint therapy. Although Emily's new therapist was not able to make a recommendation regarding conjoint counseling with mother prior to the hearing, the therapist would make a recommendation based on Emily's readiness and feelings. The record is replete with evidence that Emily was unwilling to engage in conjoint therapy with mother. Moreover, Emily's previous therapist conveyed that Emily refused to have any contact with mother and was adamant about not having conjoint therapy with mother. Emily's position was understandable given mother's record of emotional abuse and parental alienation. Therefore, the court's order terminating family reunification services for mother is supported by substantial evidence.

Request to Continue Family Reunification Services

Mother contends the dependency court erred in denying her request to continue family reunification services. We disagree.

"The Legislature has recognized there must be a limitation on the length of time a child has to wait for a parent to become adequate in

order to prevent children from spending their lives in the uncertainty of foster care. [Citation.]” (*Andrea L. Superior Court* (1998) 64 Cal.App.4th 1377, 1388.) Thus, the maximum time period during which child welfare services, including reunification services, may be provided shall not exceed 18 months from the date physical custody was taken from the parent. (§ 361.5, subd. (a)(3)(A); see *In re T.W.* (2013) 214 Cal.App.4th 1154, 1165.) The 18-month time frame may be extended up to a maximum period of 24 months only if the court finds (1) it is in the child’s best interest to have the reunification services time period extended and there is a substantial probability the child will be returned to the parent’s physical custody within the additional time period, or (2) reasonable services have not been provided to the parent.⁶ (See § 361.5, subd. (a)(4)(A).)

It was not in Emily’s best interest to extend the time period for reunification services. Emily has clearly expressed her desire not to return to mother and refused any contact for over a year. At the six-month review hearing, the court found visitation for mother with Emily would be detrimental. Moreover, mother has exhibited abusive behavior towards Emily throughout the review period. Mother drafted angry emails to her stating that she needed to lie to the Department in her favor and that Emily was being “selfish and self-centered.” And if Emily refused to lie, mother would not speak to her anymore. Emily drafted a long statement regarding mother’s emotional abuse that has

⁶ As previously discussed, mother received reasonable family reunification services to reunify with Emily.

led to depression and self-harm, as well as mother's alcohol problems. Emily also stated that mother admitted she was taking her classes and therapy as a joke and "she was faking her way through them." Prior to her refusal to see mother, Emily admitted that mother was intoxicated during an unauthorized overnight visit. At the 18-month review hearing, Emily's counsel argued that Emily "continues to feel negative and self-harming thoughts at the idea of making contact with her biological family. At this time I think it is futile to force Emily to do something that is not only against her will, but that actually sets her back mentally and emotionally." Therefore, the denial of further reunification services for mother did not constitute an abuse of discretion.

Delegation of Judicial Authority

Mother contends that the dependency court impermissibly delegated its authority to Emily and Emily's therapist to determine visitation. Mother states that at the 12-month review hearing on March 23, 2016, the court ordered that visitation between Emily and mother was only to occur "as soon as recommended by [Emily's] individual therapist." This misstates the record. In reality, the court ordered "conjoint therapy with mother, father and/or Eric as soon as

recommended by her individual therapist.” This court order solely addresses conjoint counseling, not visitation.⁷

Although a parent is statutorily entitled to visitation absent a finding of detriment (§ 362.1, subd. (a)(1)), counseling is a service the court may order if it assesses it would benefit the parent and the minor (§ 361.5). Where a child’s therapist has not recommended conjoint counseling, the court may properly decline to order it. (*In re Andrea G.* (1990) 221 Cal.App.3d 547, 556 [affirming the court not ordering conjoint therapist where 12-year-old child testified she did not want to attend and therapist urged leaving much of the decision up to the child].)

Additionally, mother had 60 days to appeal the March 23, 2016 order regarding conjoint counseling, but failed to do so. (Cal. Rules of Court, rule 8.406(a).) She cannot now challenge it based on her notice of intent to file a writ petition challenging the court’s setting of a section 366.26 hearing. This court cannot inquire into the merits of a final appealable order after the time for filing the notice of appeal has lapsed. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1151.) In any event, the court did not impermissibly delegate its authority by giving Emily’s therapist discretion to determine whether to begin conjoint counseling with mother.

⁷ The court’s most recent visitation order was on October 27, 2015, at the six-month review hearing. The court found that visitation between mother and Emily was detrimental and ordered that mother was to have no contact with Emily. The court has not subsequently modified this order.

DISPOSITION

Mother's petition for extraordinary relief is denied and the stay previously imposed is lifted.

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KRIEGLER, J.

We concur:

TURNER, P.J.

BAKER, J.