Filed 11/30/17 In re P.F. CA2/4

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| In Re P.F. et al.,<br>Persons Coming Under the Juvenile Court Law.<br>_____<br>L.F.,<br><br>Petitioner,<br><br>v.<br><br>SUPERIOR COURT OF LOS ANGELES COUNTY,<br><br>Respondent;<br><br>LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES,<br><br>Real Party in Interest. | B283465<br><br>(Los Angeles County Super. Ct. No. DK15372) |

ORIGINAL PROCEEDING; petition for writ of mandate. Petition denied.

Law Offices of Jolene Metzger, Daniel Szrom and Stephen Downes for Petitioner.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, and Brian Mahler, Deputy County Counsel, for Real Party in Interest.

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Petitioner L.F., the mother of two dependent children, seeks a writ of mandate to vacate a June 21, 2017 juvenile court order setting a selection and implementation hearing for her younger son, P.F. (Welf. & Inst. Code, § 366.26;[1] Cal. Rules of Court, rules 8.450 & 8.452.) Mother challenges two jurisdictional findings and the denial of reunification services as to P.F. For the reasons discussed below, her petition is denied.

## FACTUAL AND PROCEDURAL BACKGROUND

Mother and P.V. (father)[2] have two sons close in age: A.V., born in January 2016, and P.F., born in February 2017. Both children entered the dependency system at birth.

Mother has not sought appellate review of the juvenile court's findings and orders regarding A.V. Because the siblings are similarly situated, the parents' failure to reunify with A.V. strongly influenced the juvenile court's denial of reunification services as to P.F. (§ 361.5, subds. (b)(10) & (b)(13).) We

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[1] All further statutory references are to this code.

[2] Father is not a party to this petition.

therefore provide a brief overview of A.V.'s case before turning to his younger brother's case.

*A.V.'s Dependency Case*

At birth, A.V. and mother had positive toxicology screens for amphetamine, methamphetamine, and opiates. While A.V. was in the hospital, the Los Angeles County Department of Children and Family Services (Department) placed him in protective custody and filed a dependency petition in January 2016. (§ 300, subd. (b).)

In its February 25, 2016 Jurisdiction and Disposition Report, the Department stated that mother had a history of prostitution, incarceration, and polysubstance abuse. The report contained a statement by mother that during her pregnancy, she had been held captive by a man who physically and sexually abused her for five months.

The juvenile court granted mother reunification services, but she did not take advantage of the services offered to her. She did not enroll in a court-ordered drug treatment program and did not regularly visit A.V.

In its March 17, 2016 Last Minute Information for the court, Children's Social Worker (CSW) Hungerford related information obtained from mother that she had been diagnosed while in prison with bipolar disorder, depression, and post traumatic stress disorder, and had received unspecified medications for these conditions. She continued taking those medications for a while after her release, but had discontinued taking them. Mother had not received mental health treatment for the past three or four years. Mother blamed others for her failure to enroll in a court-ordered drug treatment program. She claimed she had been assaulted while on her way to enroll in the

Flossie Lewis treatment program in late February, and that CSW Hungerford had failed to respond to her request for transportation assistance in early March. Hungerford denied mother had made such a request.

At the March 17, 2016 adjudication hearing, the court found A.V. to be a dependent child under subdivision (b) of section 300. The court sustained all four counts of the petition:

- Mother used drugs while pregnant, causing A.V. to be born with amphetamine and methamphetamine in his system (count b-1);
- Mother had a 19-year history of illicit drug use; was a current user of amphetamine, methamphetamine, and cocaine; and had a criminal history of conviction of possession of controlled substances for sale, transportation of controlled substance, and possession of unlawful paraphernalia (count b-2);
- Mother had a history of mental and emotional problems, and had been diagnosed with bipolar disorder, depression, and post traumatic stress disorder (count b-3); and
- Father had a history of substance abuse; was a current user of marijuana; had a criminal history of conviction of possession of cocaine base for sale; and was a registered controlled substance offender (count b-4).

The court granted reunification services to mother and father. The case plan required that both parents complete a full drug and alcohol program with after care; random and on-demand drug testing; developmentally appropriate parenting

classes; and individual counseling to address mental health issues.

In September 2016, the Department reported that mother had not enrolled in any of these programs. Mother, who was pregnant with P.F., told the CSW that she had relapsed and used methamphetamine. Father had enrolled in a random drug testing program. After he had one positive test, he did not appear for subsequent tests. The parents were sporadic in their visits with A.V., which occurred about once or twice a month. They often arrived late and sometimes fell asleep during the visits.

Because neither parent had made sufficient progress with the case plan, the Department recommended the termination of family reunification services and the selection of a suitable placement for A.V. In its November 7, 2016 Last Minute Information for the Court, the Department stated that the parents had not complied with requests to provide evidence of enrollment in court-ordered services, contacted the CSW, or visited A.V. since father's last visit in August 2016.

Based on the parents' failure to comply with the case plan, the court terminated their reunification services and scheduled a section 366.26 hearing for A.V.

*P.F.'s Dependency Case*

During her reunification period with A.V., mother became pregnant with P.F. Although she was not participating in a court-ordered drug testing program, mother had a positive test for methamphetamine at a January 2017 prenatal visit. When mother gave birth in February 2017, P.F. had a negative toxicology screen.

CSW White visited mother at the hospital and learned that neither parent was prepared to care for P.F.: mother had no housing, and father was incarcerated. The department placed P.F. in protective custody with A.V.'s caregivers. Mother notified the CSW that she was planning to enroll in a residential drug treatment program.

On February 14, 2017, the Department filed a detention report and a section 300 petition for P.F. Among the issues listed in the detention report were mother's unresolved substance abuse problems, current use of illicit drugs, positive test for amphetamine on January 20, 2017, inconsistent statements regarding her drug use during pregnancy, and lack of appropriate housing plan for P.F.

The allegations in the petition were similar to those in A.V.'s petition. Counts b-1 and j-1 alleged that mother had unresolved drug abuse problems that placed P.F. at substantial risk of harm—mother had used amphetamine while pregnant, tested positive for amphetamine in January 2017, and failed to reunify with A.V. Counts b-2 and j-2 alleged that as a result of mother's unresolved mental and emotional problems, P.F. was at risk of harm.[3]

The petition warned that a denial of family reunification services would "result in immediate permanency planning through termination of parental rights, adoption, legal guardianship or planned permanent living arrangement" (citing § 361.5, subd. (b)). On February 14, 2017, the Department filed

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[3] Counts b-3 and j-3 alleged that father had a history of drug use, was a current user of marijuana, had a criminal record, and had failed to reunify with A.V.

a report in which it requested that family reunification services be denied as to P.F.

At the detention hearing, the court found a prima facie case had been made to detain P.F. from both parents. Contrary to the Department's request, the court granted family reunification services and ordered mother to participate in a drug testing program.

In its April 11, 2017 Jurisdiction/Disposition Report, the Department requested that reunification services be denied under subdivisions (b)(10) and (b)(13) of section 361.5. The Department stated that mother was doing well in a six-month residential drug treatment program, and was planning to enroll in an after-care program. Father remained incarcerated, and was planning to complete his drug testing and counseling requirements after his release.

*The June 21, 2017 Hearing and Order*

On June 21, 2017, the court issued rulings for both children. As to A.V., the court continued his section 366.26 hearing.

The court conducted an adjudication and disposition hearing for P.F. It found P.F. to be a dependent child under subdivisions (b) and (j) of section 300. It sustained all six counts in the petition. The court also made the necessary findings to remove P.F. from his parents and to deny reunification services under subdivisions (b)(10) and (b)(13) of section 361.5. Finding it was in the child's best interest to proceed to a permanency planning hearing, the court scheduled a section 366.26 hearing for P.F. on October 18, 2017.

Mother timely filed the present petition seeking to overturn the order setting a section 366.26 hearing for P.F. (Cal. Rules of

Court, rules 8.450 & 8.452.) We issued an order to show cause, and stayed the October 18, 2017 hearing.

## DISCUSSION

### I

Mother challenges the jurisdictional findings under counts b-2 and j-2 of the petition based on her unresolved mental health and emotional problems. She concedes that jurisdiction is proper under the remaining counts.

The Department argues there is no need to consider whether jurisdiction exists under each and every count where, as here, there is substantial evidence to support a finding of jurisdiction under at least one count. (*In re I.J.* (2013) 56 Cal.4th 766.) The Department is correct. Regardless of the sufficiency of the evidence to support the jurisdictional findings under counts b-2 and j-2, we conclude there is substantial evidence to establish jurisdiction over P.F. under the remaining counts.

We have examined the record and conclude there is substantial evidence to support the disputed jurisdictional findings. The record contains mother's statements to the CSW regarding her diagnoses of bipolar disorder, depression, and post traumatic stress disorder; use of prescription medications; and recent lack of mental health care. When A.V. was removed at birth due to the positive toxicology screen for methamphetamine and amphetamine, mother did not challenge the jurisdictional finding based on her unresolved mental and emotional problems. During her reunification period with A.V., mother failed to participate in court-ordered mental health counseling, failed to address her drug abuse problem, and, while pregnant with P.F., tested positive for methamphetamine. On this record, there is

substantial evidence to support a reasonable inference that mother's unresolved mental and emotional problems played a causal role in her failure to address the array of issues—particularly substance abuse—that led to the removal of A.V. and P.F. It is reasonable to conclude that P.F., like A.V., is at substantial risk of serious harm because of mother's unresolved mental health and emotional problems.

II

Mother contends the juvenile court erroneously denied reunification services under subdivisions (b)(10) and (b)(13) of section 361.5.[4] We do not agree.

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[4] Subdivision (b) of section 361.5 provides in relevant part that "[r]eunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

". . .

"(10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.

". . .

"(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or

"Ordinarily, when a child is removed from parental custody, the juvenile court must order services to facilitate the reunification of the family. (§ 361.5, subd. (a).) "'Nevertheless, as evidenced by section 361.5, subdivision (b), the Legislature recognizes that it may be fruitless to provide reunification services under certain circumstances. [Citation.] Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources.'" [Citation.]" (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914 (*R.T.*).)

We review the juvenile court's findings under section 361.5 for substantial evidence. (*R.T.*, *supra*, 202 Cal.App.4th at p. 914.) We draw all presumptions "'in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order.' [Citation.]" (*In re G.L.* (2014) 222 Cal.App.4th 1153, 1164.)

Subdivision (b)(10) of section 361.5 applies to a parent whose reunification services were terminated as to the child's sibling based on the parent's failure to reunify with the sibling after the sibling had been removed from that parent, and, according to the findings of the court, the parent "has not subsequently made a reasonable effort to treat the problems that led to the removal of the sibling" from that parent. (§ 361.5, subd. (b)(10).)

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refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible."

"The reasonable effort requirement focuses on the extent of a parent's efforts, not whether he or she has attained 'a certain level of progress.' [Citation.] 'To be reasonable, the parent's efforts must be more than "lackadaisical or half-hearted."' [Citations.] However, '[t]he "reasonable effort to treat" standard "is not synonymous with 'cure.'" [Citation.]" (*R.T.*, *supra*, 202 Cal.App.4th at p. 914.)

Mother argues that she made reasonable efforts to treat the substance abuse problems that led to the removal of P.F.'s sibling, A.V., by seeking "residential drug treatment upon her release from the hospital in February and five days *prior* to the filing of a petition in juvenile dependency court." The Department argues that mother is ignoring the period between March 2016 and February 2017, when she made no effort to treat the problems that led to A.V.'s removal. These problems include her extensive history of drug abuse, related criminal convictions, and unresolved mental and emotional problems.

We conclude the record contains substantial evidence to support the juvenile court's denial of reunification services under section 361.5, subdivision (b)(10). It was only after P.F. was placed in protective custody, in February 2017, that mother enrolled in the residential drug treatment program she had been ordered to complete in 2016. Because mother did not comply with this or any other requirement of A.V.'s case plan, her continued drug use remained undetected until a January 2017 prenatal checkup late in her pregnancy. By the time P.F. was taken into protective custody, mother's compliance with A.V.'s case plan was minimal at best, and fell short of the "reasonable effort to treat" standard. (§ 361.5, subd. (b)(10).)

The parties disagree whether mother's subsequent enrollment in a residential drug treatment program in February 2017 precluded denial of reunification services under subdivision (b)(13) of section 361.5. Mother contends that because her enrollment occurred "five days *prior* to the filing of a petition in juvenile dependency court," the evidence fails to show that she was resistant to services during the "three-year period immediately prior to the filing of the petition that brought that child to the court's attention" (§ 361.5, subd. (b)(13)).

The Department argues that mother was resistant to services during the three-year period prior to the filing of P.F.'s petition, and her enrollment in a treatment program five days before the petition was filed is insufficient to avoid a denial of services, particularly in light of her failure to participate in other aspects of the case plan, including individual counseling to address mental health issues.

We conclude that mother's enrollment in a residental treatment program five days before P.F.'s section 300 petition was filed does not establish a basis for relief. For a juvenile court to grant reunification services to a parent who failed to reunify with the child's sibling (§ 361.5, subd. (b)(1)), it must find that reunification would be in the child's best interests. (§ 361.5, subd. (c).) Mother does not address this requirement in her petition. Even if this issue has not been forfeited, we conclude the record fails to support a finding that reunification would be in P.F.'s best interests. Mother's 20-year history of illicit drug use, noncompliance with A.V.'s case plan, and continued use of methamphetamine while pregnant with P.F. indicates that reunification would not be in the best interest of the child.

## DISPOSITION

The petition is denied.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

MANELLA, J.