Filed 2/21/18 In re A.U. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re A.U., a Person Coming Under the Juvenile Court Law.	B283325 (Los Angeles County Super. Ct. No. DK02835)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. M.H., Defendant and Appellant.	

APPEAL from findings and orders of the Superior Court of Los Angeles County, Teresa Sullivan, Judge. Affirmed.

Suzanne Davidson, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Mary C. Wickham, County Counsel, R. Keith Davis, Assistant County Counsel, Stephanie Jo Reagan, Principal Deputy County Counsel, for Plaintiff and Respondent.

The juvenile court adjudicated then-two-month-old A.U. a dependent child and removed him from the custody of his mother, M.H. (Mother), based in part on her mental and emotional problems that inhibited her ability to regularly care for her very young son. The court fashioned a disposition order providing Mother with reunification services, including a psychological evaluation and individual counseling. At a later progress hearing, the Los Angeles County Department of Children and Family Services (the Department) informed the court it could not afford to continue funding individual counseling with Mother's then-current therapist and was referring Mother to another low-cost provider. We consider whether, as Mother contends, the change to low-cost individual therapy establishes the Department failed to provide Mother with reasonable reunification services.

I. BACKGROUND

A. Initial Dependency Proceedings

A.U. was born in June 2015 (at the time, Mother had an open dependency case concerning A.U.'s half-sibling). Less than a month later, the Department filed a dependency petition asserting the juvenile court should assume jurisdiction over A.U. because Mother "has mental and emotional problems, including a diagnosis of [bipolar] disorder . . . , which renders [her] incapable of providing regular care and supervision of the child." The Department subsequently filed an amended petition adding an allegation that juvenile court jurisdiction over A.U. was also warranted because Mother and A.U.'s father had a history of engaging in physical altercations.

The court sustained (with certain amendments by interlineation) the aforementioned allegations in the amended

petition and ordered A.U. removed from Mother's custody. Pursuant to the court-ordered case plan, Mother was required to participate in a developmentally appropriate parenting education program and a domestic violence program or support group for victims. Additionally, the case plan required Mother to undergo a psychological assessment, participate in mental health counseling, participate in individual counseling with a therapist to address case issues, and take all prescribed psychotropic medication.

B. The Six-Month Review Hearing

A month after the disposition hearing, the Department filed an interim review report that described Mother's mental health status. According to a psychiatric assessment undertaken the day before the disposition hearing, Mother had been prescribed and agreed to take antipsychotic medication, but she was angry the medication had been prescribed and blamed the medication for causing the juvenile court to remove A.U. and his half-sibling from her custody. The Department's report also summarized the social worker's conversation with Mother's therapist at the time, Cynthia Turbow (Turbow), concerning Mother's progress. Turbow had previously noted Mother "denies she has a mental illness," but during her conversation with the social worker, Turbow stated Mother had been attending all of her appointments, was on time, and was in compliance with her mental health counseling.

The interim report also related pertinent details of conversations between the social worker and Mother. Mother initially told the social worker that she "d[id] not want to participate in a domestic violence support group because it's

'stupid,'" but Mother eventually agreed to participate after the social worker asked her to reconsider. Mother also stated she had not noticed any beneficial difference since starting her prescribed antipsychotic medication, and she inquired whether she had to wait six months to get A.U. "back in her care." When the social worker explained six months was the amount of time the court gave her to reunify with A.U., Mother began to cry, yell, and curse—claiming A.U. had been taken away only because of a clerical mistake and asserting the judge at the disposition hearing had been "giggling about her." The social worker ended the conversation when efforts to calm Mother and reiterate the court's reasons for removing A.U. were unsuccessful.

It is undisputed that over the ensuing five months, Mother made progress in complying with her case plan. She secured a new job; participated in 20 domestic violence classes and 20 parenting classes (at a cost to her of ten dollars for each two-hour class); completed 19 hours of individual therapy with licensed family therapist David Zeitz (Zeitz), which the Department paid via STOP Violence Against Women funding; and met with another psychiatrist monthly.

According to Zeitz, Mother had benefitted from her individual therapy and was "centered on successfully completing her service plans." He reported "[s]he understands how she has been violated in her domestic violence relationships and how she participated in those actions." He recommended Mother "continue with her individual therapy to include when she does reunify with her child/children to support and process her parenting, motherhood and new family dynamic stressors."

At the initially scheduled date for the six-month review hearing, the court ordered the Department to prepare a

supplemental report regarding Mother's compliance with her mental health care and continued the hearing to the following month.

Therapist Zeitz provided the department with an updated progress report, which indicated Mother was engaged, displayed appropriate emotions, appeared forthcoming, and had "built a therapeutic alliance with [him]." Zeitz further reported Mother had developed a positive outlook and a "can do" attitude from "realiz[ing] successes in her service plan." Zeitz acknowledged Mother "continued to see faces that are not real a couple days a week," but opined she was able to "determine what [is] real and what [is] not" and recounted Mother's statement that the hallucinations "do not bother her to any great extent." The Department also contacted a clinic where Mother had been seen by a psychiatrist and learned Mother had consistently attended her psychiatric appointments. The psychiatrist had yet to diagnose her condition but was leaning toward bipolar disorder; he noted Mother, who denied mood swings or psychotic episodes, had been on medications since she started her visits with him.

Based on the updated information from Zeitz and Mother's psychiatrist, the Department recommended continued family reunification services. The parties appeared for the rescheduled six-month review hearing and the juvenile court found that Mother's progress "toward alleviating or mitigating the causes necessitating placement in foster care [was] substantial." The court further found the Department had complied with the case plan by making reasonable efforts to enable A.U.'s safe return home. The court set a date for a 12-month review hearing and ordered the Department to assess (1) whether Mother could

appropriately reside in the maternal grandmother's home, and (2) liberalizing Mother's visits.

C. The 12-Month Review Hearing and Termination of Reunification Services

About a month later, in May 2016, the Department prepared another interim review report. Among other things, it stated the Department was "unable to provide [any more] funding for [Mother's] . . . therapist David Zeitz because as reasonable efforts [the Department] has funded mental health services for 24 sessions. [The Department] will be referring [Mother] to Full Services Partnership for further individual counseling." Mother's last session with Zeitz occurred that month, which meant the Department had funded therapy with Zeitz for approximately eight months (since October 2015).[1]

For the next several weeks, Mother continued to comply with her case plan. The clinic providing Mother with psychiatric services reported she had been diagnosed with Bipolar I Disorder, she had been taking her prescribed medications, and she had met with her psychiatrist and a medical care provider. Mother also began unmonitored visits in the maternal grandmother's home, and A.U.'s maternal grandmother stated Mother was "appropriate and loving towards her children during the visits." At the end of June, using the referral provided by the Department, Mother enrolled in individual counseling at the Low

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[1] The juvenile court held a hearing to receive a copy of the May 2016 status report. No transcript of this hearing is included in the record, but there is no notation in the minute order that indicates Mother objected during this hearing to the termination of funding for therapy with Zeitz.

Cost Community Counseling Center in Santa Fe Springs. In early July, Mother began overnight visits with the children in the maternal grandmother's home; she spent the night on the weekends and visited consistently.

Toward the end of July 2016, however, Mother's compliance with her case plan deteriorated. Within several days after appearing for an individual counseling session on July 21, 2016, at the Low Cost Community Counseling Center, several incidents revealed Mother's behavior had turned confrontational and she had lost interest in participating in counseling. A Department social worker contacted Mother by phone on July 27, 2016, and Mother stated: "I am fed up with the system. I don't give a fuck. I am taking my medication and completed domestic violence, parenting[,] and individual therapy. I do not want to speak to your supervisor. I feel even if I talk to your supervisor it will not make a difference. I am in agreement with legal guardianship. I want my children in my care. The system is phony, and the system does not make sense to me." After this phone call, Mother had two "no shows" at the counseling center and eventually told the office manager "she was closing herself out." In addition, according to the maternal grandmother, Mother had been "talk[ing] about things that don't make sense," including "people following her or that the Bay [A]rea police came looking for her." The maternal grandmother also indicated Mother was "difficult to deal with" and stated she did not want Mother living with her in the event Mother reunified with her children.

A social worker spoke to Mother in September 2016 regarding the missed counseling sessions, and she confirmed her last session was in July and she had "stopped going." Mother added she was "fed up and tired of paying this shit for classes."

At the 12-month review hearing, the Department recommended the court terminate Mother's family reunification services and set a Welfare and Institutions Code section 366.26 hearing[2] to consider terminating Mother's parental rights and a placement plan for A.U. Mother did not attend the 12-month review hearing, but she was represented by counsel. Her attorney twice objected to the recommendation to terminate reunification services, stating the objection in the following terms: "I would object to termination of my client's family reunification for the reasons stated in the report, my client's statements in the report."

Relying on the Department's report—including Mother's above-quoted response to the Department's inquiry about her individual counseling—the juvenile court found by "clear and convincing evidence that [the Department] has complied with the case plan making reasonable efforts to return the child to a safe home and to complete any steps necessary to finalize the placement of the child." The court ordered Mother's reunification services terminated, explaining: "Mother has not made any significant progress in resolving the problems that led to the removal of her children. She has not demonstrated a capacity, nor the ability to complete the objectives of the treatment plan to provide for [A.U.]'s safety, protection, physical or emotional health." The court further found it was in A.U.'s "best interest to set a hearing to select a permanent plan of adoption, guardianship, or other planned permanent living arrangements with a relative or foster care provider."

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[2] Statutory references that follow are to the Welfare and Institutions Code.

The juvenile court stated on the record that it would direct the clerk to send Mother a written advisement of the right to seek review of the order terminating her reunification services. So far as the appellate record reveals, however, no such notice was provided to Mother.

D. The Parental Rights Termination Hearing

Mother filed a section 388 petition in advance of the scheduled section 366.26 hearing.[3] The court held a joint hearing to consider the petition and, if denied, the termination of Mother's parental rights. Mother failed to appear at the hearing.

The court denied Mother's section 388 petition, finding no evidence of a change in circumstance. The court stated Mother's mental health issues remained unresolved and her request to return A.U. to her was not in his best interest.

Proceeding to the permanency planning and termination of parental rights issues, the court admitted the Department's section 366.26 report in evidence. It stated Mother had become "agitated" when questioned about her mental health diagnosis and directed a profane outburst at a social worker. According to the report, Mother stated: "'My kids were taken away because it was a fucking social worker's mistake. Did you not read

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[3] The Department had identified adoption by A.U.'s former foster parents as the recommended permanent plan for A.U. That was a change from the Department's previous recommendation for legal guardianship with the maternal grandmother. The Department reconsidered its recommendation after the maternal grandmother relocated with A.U. to Las Vegas without informing the Department or obtaining a court order authorizing the move.

the . . . reports, you stupid [expletive]. It was a mistake and the judge gave [A.U.'s half-sibling] to his . . . molestor father, you stupid [expletive].'" Mother also stated she had been "misdiagnosed" and "forced to take medication that was not [hers]."

At the section 366.26 hearing, and his client having failed to appear, Mother's attorney offered no evidence or argument on her behalf. The juvenile court found by clear and convincing evidence that A.U. was adoptable, it would be detrimental to return A.U. to Mother, and no exception to adoption applied. The court terminated Mother's parental rights to A.U., and Mother now appeals the parental rights termination order on the ground that it would not have been entered but for the assertedly erroneous termination of her reunification services at the earlier 12-month review hearing.

II. DISCUSSION

Substantial evidence supports the juvenile court's finding that the Department provided Mother with reasonable reunification services: the Department identified the problems leading to Mother's loss of custody; offered services designed to remedy those problems, including paying for individual counseling with Zeitz over an eight-month period; and maintained ongoing contact with Mother, which included following up with her when she failed to continue in individual counseling. We therefore reject Mother's attempt to overturn the parental rights termination order on the ground that her reunification services were unjustifiably terminated. While she believes the Department's decision to cease paying for therapy sessions with Zeitz was the cause of her deteriorating compliance

with her case plan and is alone sufficient to demonstrate reasonable services were not provided, Mother's position runs contrary to applicable law, sound public policy, and a review of the record in the light most favorable to the juvenile court's order.

A. Mother's Reasonable Services Complaint Is Cognizable in This Appeal from the Order Terminating Her Parental Rights

When a party is not present at the time a juvenile court orders a hearing under section 366.26, the clerk of the court "by first class mail" must advise the party "of the requirement of filing a petition for extraordinary writ review . . . to preserve any right to appeal in these issues." (§ 366.26, subd. (l)(3)(A).) As the Department concedes, "[t]here is no indication in the appellate record that [M]other was provided with notice of the requirement to seek writ review" to challenge the termination of her reunification services and the setting of the section 366.26 hearing. "As such, '[Mother]'s claim of error [relating to reunification services is] cognizable on appeal . . . .' (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 450[ ].)" (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1038; see also *In re A.A.* (2016) 243 Cal.App.4th 1220, 1235 ["The courts have consistently held that when a parent is not properly advised of his or her right to challenge the setting order by extraordinary writ, and consequently the parent does not timely file a writ petition, good cause exists to consider issues relating to the setting hearing in an appeal from the order terminating parental rights"].)

B. Mother's Reasonable Services Complaint Is Not Forfeited

The Department contends Mother forfeited her challenge to the sufficiency of the evidence supporting the juvenile court's finding because her objection in the juvenile court ("I would object to termination of my client's family reunification for the reasons stated in the report") was insufficiently specific. We are not persuaded; given that Mother's challenge is to the sufficiency of the evidence to support the juvenile court's finding at a contested hearing, the issue is preserved even without any objection at the hearing.[4] (*In re K.F.* (2009) 173 Cal.App.4th 655, 660 ["Sufficiency of the evidence has always been viewed as a question inherently raised in every contested trial of any issue of fact, and requiring no further steps by the aggrieved party to be preserved for appeal. [Citations.] This view has been repeatedly adopted in appeals from juvenile court orders"]; *In re Isabella F.* (2014) 226 Cal.App.4th 128, 136; *In re Erik P.* (2002) 104 Cal.App.4th 395, 399-400.)

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[4] *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, is not to the contrary. In that case, the juvenile court asked the mother's attorney "whether there was *any* information that would allow the court to find there was a substantial probability of return at the 12-month date"; her lawyer responded, "'Not at this time, Your Honor. I will certainly file [a section] 388 [petition] if that is not the case." (*Id.* at p. 1110.) Considering this response along with the fact "[n]o section 388 petition was ever filed," the court determined the mother had waived her challenge to the adequacy of the Department's reunification services. (*Ibid.*) Here, not only did Mother object to the termination of reunification services, she also filed a section 388 petition.

C. Substantial Evidence Supports the Finding That the Department Provided Mother with Reasonable Services

1. Legal framework

If a juvenile court removes a child from parental custody and assumes dependency jurisdiction under section 300, the court may require the Department to provide reunification services to the parent and order participation in a counseling program "designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300." (§ 362, subd. (d); see also § 361.5, subd. (a).) The court then monitors compliance with family reunification plans at periodic hearings.

At the six-month post-disposition review hearing, the juvenile court must return the child to his or her parent's custody unless it finds by a preponderance of the evidence that such return would "create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (e)(1).) If the court finds a risk of detriment precluding the child's return, it "shall determine whether reasonable services that were designed to aid the parent or legal guardian in overcoming the problems that led to the initial removal and the continued custody of the child have been provided or offered to the parent or legal guardian. The court shall order that those services be initiated, continued, or terminated." (§ 366.21, subd. (e)(8).) If the court does not set a hearing under section 366.26, it must "direct that any reunification services previously ordered . . . continue to be offered to the parent or legal guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5 . . . ."

(§ 366.21, subd. (e)(7).) If services are continued, the Department, at the 12-month hearing, must prove by clear and convincing evidence that it has provided reasonable services to the parent; if it fails to meet this burden, family reunification services must be extended to the end of the 18-month period. (§§ 361.5, subd. (a), 366.21, subd. (g)(1); Cal. Rules of Court, rules 5.708(c) & 5.715(b)(1); *In re K.C.* (2012) 212 Cal.App.4th 323, 329 (*K.C.*).)

The Department "must make a good faith effort to provide reasonable services responsive to the unique needs of each family, and the plan must be . . . ""designed to eliminate those conditions which led to the juvenile court's jurisdiction finding."" [Citation.]" (*Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397, 420 (*Patricia W.*); see also *Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345 [social services agency must make good faith effort to create and effectuate reunification plan] (*Amanda H.*).) Thus, the adequacy of a reunification plan and the reasonableness of the Department's efforts "are judged according to the circumstances of each case. [Citation.]" (*Amanda H.*, *supra*, at p. 1345.) "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 (*Misako R.*).) "Services will be found reasonable if the Department has '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.]" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972-973.)

We review a finding that reasonable services were provided for substantial evidence, considering the record in the light most favorable to the Department. (*Patricia W.*, *supra*, 244 Cal.App.4th at p. 419.) "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed. [Citation.]" (*Amanda H.*, *supra*, 166 Cal.App.4th at p. 1346, internal quotation marks omitted.)

2. Analysis

Mother's sole contention is that the Department failed to provide her with reasonable reunification services because it terminated her individual therapy with Zietz after only 24 sessions and purportedly failed to assist Mother in transitioning to another therapist. Her position is unpersuasive.

There was substantial evidence the Department made a good faith effort to address via individual counseling the conditions that led to the dependency finding. The Department diligently monitored Mother's mental health progress and obtained periodic psychological reports and evaluations. The Department also paid for therapeutic sessions with licensed therapist Zeitz—in addition to care she was receiving from her psychiatrist—using "Stop Funds which were costly." As public funding is not without limits, the Department acted reasonably in referring Mother to a lower-cost provider after 24 therapy sessions. (*Misako R.*, *supra*, 2 Cal.App.4th at p. 547 ["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"].)

There is also no reliable evidence in the record from which we would conclude that the change in therapists *was* the cause of Mother's deteriorating compliance. Mother, of course, never said it was, and the Department's status review report (the only evidence offered at the 12-month review hearing) quite emphatically suggested otherwise—relating Mother was simply "fed up," "d[idn't] give a fuck," believed "[t]he system [wa]s phony," and was tired of paying for classes. Instead, on appeal, Mother emphasizes only that her case plan compliance problems occurred after funding for Zeitz ceased. That is not enough, particularly when the problems did not immediately develop when Mother stopped seeing Zeitz. Rather, her progress continued for almost two months after that time, she continued to have available psychiatric care, she was able to use the Department's low-cost counseling referral and attended one session before deciding to stop, and (so far as the record reveals) she did not complain about not being able to see Zeitz when the Department contacted her soon after her problems complying with the case plan became apparent.

Moreover, the public policy implications of accepting Mother's argument are cause for concern. If it were the case that the Department fails to provide reasonable services merely by stopping specialized funding once initially provided to a parent, the Department would be far more cautious about approving the allocation of such funds in the first place. That caution would likely impede rather than assist the Department's mission in many cases. So long as the services provided are reasonable—and here they were—we are loathe to accept an argument that runs the risk of creating a "one-way ratchet": keep funding, or face reversal.

The cases cited by Mother in support of her position are all factually distinct and do not persuade us to reach a contrary result. In *Amanda H.*, the Court of Appeal determined the Department failed to "meet the clear and convincing evidence standard when it . . . told [the] mother and the court for a year that [the] mother was enrolled in the right programs and then, at the 11th hour, used that mistake to ask the court to terminate reunification services." (*Amanda H.*, *supra*, 166 Cal.App.4th at p. 1347.) In *K.C.*, the Court of Appeal reversed for failure to provide reasonable services where the father underwent a psychological evaluation that recommended a further evaluation but the Department's only attempt to secure that further evaluation was to send him to a mental health clinic that concluded he did not meet its criteria for treatment; the Department made no attempt to secure the evaluation elsewhere. (*K.C.*, *supra*, 212 Cal.App.4th at pp. 333-334.) And in *Patricia W.* the Court of Appeal reversed where the Department failed to secure a psychological evaluation as part of a case plan to identify the mother's condition and made no effort to ascertain how the mother could better manage her psychiatric medications. (*Patricia W.*, *supra*, 244 Cal.App.4th at pp. 422-423, 425.)

The contrast between these cases and Mother's situation is readily apparent. Unlike the mother in *Amanda H.*, Mother was not misled by the Department to believe she was complying with her case plan when she failed to complete her individual counseling component. Unlike the mother in *Amanda H.*, who immediately enrolled in domestic violence counseling once learning of the Department's misrepresentation, or the father in *K.C.*, who tried three times to secure the court-ordered psychological evaluation at a Department-recommended provider

that declined to undertake the evaluation, Mother simply chose to stop participating in services. And unlike the scenario in *Patricia W.*, the Department made repeated efforts to provide Mother with services directly relevant to ameliorating the conditions that led to dependency jurisdiction in the first place. In sum, it was Mother's actions, not the Department's, that led to her non-compliance—which is no basis for reversal.

DISPOSITION

The parental rights termination order is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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