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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

N.A.,

B240635

Petitioner,

(Super. Ct. No. CK84908)

v.

THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES,

Respondent.

LOS ANGELES COUNTY DEPARTMENT
OF CHILDREN AND FAMILY
SERVICES,

Real Party in Interest.

Writ petition to review order setting hearing under Welfare and Institutions Code section 366.26. Sherri Sobel, Juvenile Court Referee. Petition denied.

Law Office of Timothy Martella, Rebecca Harkness and Renelde Espinoza for Petitioner.

No appearance for Respondent.

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, Peter Ferreira, Senior Deputy County Counsel for Real Party in Interest Los Angeles County Department of Children and Family Services.

Petitioner N.A. (Mother) seeks extraordinary relief (Welf. & Inst. Code, §366.26, subd. (l);¹ Cal. Rules of Court, rule 8.452) from the juvenile court's order, made at the 12-month review hearing (§ 366.21, subd. (f)), setting a hearing pursuant to section 366.26 to consider termination of parental rights and implementation of permanent plans for three of her four dependent children: then 16-year-old I.A., 14-year-old C.C. and 13-year-old J.C.² We deny the petition on the merits.

FACTUAL AND PROCEDURAL BACKGROUND

On October 28, 2010 the Los Angeles County Department of Children and Family Services (Department) filed a petition under section 300 to declare Mother's four children dependents of the juvenile court. The petition alleged Mother had physically abused C.C., J.C. and E.M., failed to obtain timely medical treatment for an injury suffered by J.C. and had a history of illicit drug use.

In its report for the detention hearing the Department stated it first became involved with Mother's family in January 2010, after J.C. arrived at school with his right wrist wrapped in gauze and told school personnel his wrist hurt but Mother had not taken him to the doctor because she did not have time. The school officials were unable to contact Mother by telephone and suspected she might be using drugs. J.C. told the social worker he had fallen on his arm. Mother denied she used drugs and refused to take a drug test.

On October 26, 2010 the Department received a telephone call from the police indicating C.C. was afraid to return to Mother's home. C.C. told the social worker that Mother was physically abusing her and J.C. and had put C.C. out of the family home three months earlier. C.C. had been living with a neighbor; when she returned to Mother's house to get some clothes to go to school, Mother began hitting her with a belt.

¹ Statutory references are to the Welfare and Institutions Code.

C.C. telephoned the police and, after a physical struggle with Mother, went outside to wait for the police to arrive.

J.C. told the social worker he suffered the wrist injury in January 2010 when Mother struck him with a broomstick. J.C. also described a previous incident in which Mother hit him in the chest with a “2 x 4 stick,” leaving an open wound, and another instance when Mother hit him and E.M. with a bamboo stick. E.M. described the incident in which Mother hit J.C. and him with a bamboo stick and showed the social worker a mark on his leg that he said was left by one of the blows. Mother denied she had abused any of her children.

Mother’s next-door neighbor told the social worker she had taken C.C. into her home three months earlier when C.C. was put out by Mother. The neighbor also stated she had witnessed Mother striking C.C. with a belt and J.C. with a stick. The neighbor added that Mother was crazy and had spoken of ghosts coming out of her body. On October 28, 2010 the juvenile court ordered the children detained in shelter care.

In its jurisdiction and disposition report submitted November 19, 2010 the Department stated C.C. had told the social worker Mother had been physically abusing her almost daily since she was 11, sometimes leaving bruises and scars, and also hit J.C. with sticks, a clothes hanger and a broom “plenty of times.” C.C. added that Mother smoked marijuana and drank alcohol every day. J.C. told the social worker Mother hit him with a broom, a stick and a belt, sometimes leaving scars and bruises. E.M. told the social worker Mother regularly gave him “licks” with a belt for misbehaving, and sometimes it was up to 20 “licks.” E.M. added he had seen Mother smoking marijuana many times.

On January 6, 2011 Mother pleaded no contest to an amended petition alleging she had used inappropriate physical discipline on C.C., J.C. and E.M., placing all of the children at risk of harm. At the disposition hearing held immediately thereafter, the court

² At the 12-month review hearing the juvenile court terminated jurisdiction as to 10-year-old E.M. and issued an order granting sole physical custody to the father and

ordered the Department to provide reunification services for Mother and ordered Mother to attend anger management group counseling and parenting classes, as well as conjoint counseling with the children when appropriate. The court continued the matter to July 7, 2011 for the six-month review hearing (§ 366.21, subd. (e)).

In its report for the six-month review hearing the Department stated Mother had failed to enroll in any of her court-ordered programs. Mother told the social worker that her schedule did not allow time to attend any programs and suggested she did not need to attend them in any event because she had appropriately disciplined her children. The social worker had met with Mother on a monthly basis, provided her with referrals for parent education classes, anger management group counseling and individual counseling, provided her with transportation funds, and emphasized the importance of enrolling in the court-ordered programs. Mother tested positive for cannabinoids on three occasions and failed to appear for her seven other scheduled drug tests. The social worker arranged for visits between Mother and the children; but Mother visited the children only on a sporadic basis, and the visits were unsatisfactory.

The Department further indicated in its six-month report that C.C.'s current whereabouts were unknown and she had been arrested several times since her placement for theft, burglary and solicitation of prostitution. E.M. had brought a butcher knife to school in his backpack and threatened to kill anyone who tried to bully him. The Department recommended termination of reunification services for Mother.³

At the six-month review hearing on July 7, 2011 the court released E.M. to his father's care with family maintenance services. The court found the Department had provided reasonable reunification services and also found Mother was not in compliance with her case plan. The court ordered continued family reunification

joint legal custody to Mother and the father.

³ The Department's recommendation to terminate reunification services prior to the review hearing set pursuant to section 366.21, subdivision (f), appears to conflict with the requirements of section 361.5, subdivision (a)(2).

services and set the 12-month review hearing (§ 366.21, subd. (f)) as to I.A., C.C. and J.C. for January 4, 2012.

In its filing for the 12-month review hearing the Department reported, despite repeated requests by the social worker, Mother had failed to provide proof that she had enrolled in any of her court-ordered programs although she claimed to have enrolled in a program in September 2011. Mother continued to deny she had inappropriately disciplined the children. C.C.'s whereabouts remained unknown. J.C. was placed with a paternal uncle. I.A. had recently turned 17 and was receiving wraparound services.⁴ E.M. remained in his father's custody and was adjusting well. The Department recommended the court terminate jurisdiction over E.M. and grant his father full custody, and Mother's reunification services as to the other children be terminated.

At the commencement of the 12-month review hearing on January 4, 2012, the court noted that the proceedings were 14 months old. Mother requested a contest. The court continued the case to January 12, 2012 for a progress hearing and to February 22, 2012 for the contested 12-month review hearing.

In an addendum report for the January 12, 2012 progress hearing the Department chronicled the social workers' efforts to obtain information from Mother regarding her claimed participation in court-ordered programs. Mother had arrived for a meeting with the social worker on November 16, 2011 without documentation showing her participation in programs and instead engaged in a verbal confrontation with the social worker. At a second meeting on December 28, 2011 Mother stated she had completed all her programs but again failed to provide documentation showing participation in any programs.

The contested 12-month review hearing was held on February 22, 2012. After the court admitted the Department's reports into evidence, Mother testified she had completed 21 or 22 weeks of a 26-week anger management program and had learned

⁴ The wraparound program was established in 1997 to provide intensive services to children with complex needs, using a team approach.

from the classes to think before acting and to remain calm and control her emotions. The court interrupted Mother's testimony to inquire whether C.C. or J.C., who were present in court, wished to return to Mother's care. Counsel for the two children replied, "Neither one do [sic]. Strongly, strongly, I can't say it strongly enough." Mother then testified she had not enrolled in parenting classes because her referrals came late and she was not given transportation assistance, and she did not enroll in a counseling program because she did not think it was necessary. Mother added she had not visited with J.C. because he was placed too far away and she had not received transportation funds during the previous four months. Mother explained, although the social worker informed her that transportation funds were available, the social worker did not tell her "when to come get it."

Mother also testified she had not spoken with C.C. on the telephone or visited with her because she did not have a relationship with C.C. Mother stated she was willing to participate in conjoint therapy with her children "if it's convenient," explaining her attendance at cosmetology school took up most of her time. Mother added she had not worked for two years because she became depressed after a friend was killed by police and because she was having problems with her children.

At the conclusion of testimony counsel for the Department requested that the court terminate reunification services for Mother. Counsel noted the Department's report for the six-month review hearing documented the various program referrals and transportation funds provided to Mother by the social worker and outlined the social worker's multiple reminders to Mother of the importance of enrollment in her court-ordered programs. Counsel further observed Mother had made no claim at the six-month hearing that the Department was not providing adequate services, nor had she mentioned any impediment to her compliance with her case plan.

Counsel for I.A., C.C. and J.C. joined in the Department's request to terminate reunification, citing Mother's failure to enroll in programs, her failure even to

communicate with C.C., and her very limited contact with J.C. and I.A. Counsel also stressed that none of the three children wished to maintain a relationship with Mother.

Counsel for Mother argued that she was entitled to additional reunification services, citing Mother's testimony that she was participating in one program and insisting the Department's reunification services had been insufficient.

After hearing argument, the court terminated reunification services and set the matter for a hearing under section 366.26 as to I.A., C.C. and J.C. The court found that Mother had not made significant progress in resolving the problems that led to the children's removal from her care and had not maintained regular and consistent contact with her children, demonstrating Mother's failure to take responsibility and lack of interest in having a relationship with her children. The court observed Mother's testimony manifested deflection and blame and also noted the children stated absolutely that they did not wish to return to Mother's care. The court found by clear and convincing evidence that the Department had made reasonable reunification efforts, adding it "[did] not think there is an issue there at all." The court also pointed out that less than three months remained before the case reached the 18-month statutory limit for reunification services, and found there was not a substantial probability I.A., C.C. or J.C. could be returned to Mother's custody by the 18-month date.

CONTENTIONS

Mother principally contends the juvenile court improperly terminated reunification because there was not substantial evidence to support the court's finding the Department had provided reasonable reunification services. Mother further contends the court improperly shifted the burden of proof to her at the 12-month review hearing regarding the issue of reasonable services.

DISCUSSION

1. Substantial Evidence Supports the Juvenile Court's Finding of Reasonable Reunification Services.

We review the juvenile court's order finding that reasonable reunification were offered under the substantial evidence standard. (*In re Shelley J.* (1998) 68 Cal.App.4th

322, 329.)⁵ We recognize in most cases more services might have been provided and the services that were provided are often imperfect. The standard, however, is whether the services provided were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

Substantial evidence supports the juvenile court's finding the services offered to Mother were reasonable under the circumstances of her case. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 416-417; *In re Jasmon O.* (1994) 8 Cal.4th 398, 434-425.) The record, as summarized above, establishes the social worker immediately identified the problems that led to the loss of custody, promptly provided Mother with referrals for her court-ordered programs, and thereafter met with Mother in person on a monthly basis and urged her to comply with her court-ordered treatment plan. The record further shows, notwithstanding the social worker's referrals and other efforts to assist her, Mother failed to take advantage of the various services offered, claiming her schedule did not permit her to enroll in treatment programs and insisting she had done nothing wrong when she abused her children.

Mother urges the social worker was derelict in failing to implement the court's order for conjoint counseling "when appropriate." Mother suggests, although the order itself was impermissibly vague,⁶ the social worker should have arranged for conjoint counseling at the earliest possible opportunity. While the order may not have been as explicit as possible, by directing that conjoint counseling commence when it was

⁵ When we review the juvenile court's findings under the substantial evidence standard, we inquire only whether there is any evidence, contradicted or uncontradicted, that supports the court's determination. We resolve all conflicts in support of the determination, indulge in all legitimate inferences to uphold the findings and may not substitute our deductions for those of the juvenile court. (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.)

⁶ A challenge to the juvenile court's order for conjoint counseling should have been made by Mother, if at all, by way of appeal following the dispositional hearing. (§ 395, subd. (a)(1); *In re S.B.* (2009) 46 Cal.4th 529, 532; *In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1350.)

appropriate to do so, the court unmistakably intended such counseling would be initiated only after Mother was making progress in her other treatment programs. Yet, as of the six-month review hearing, Mother had failed to enroll in any of her court-ordered programs and even denied she had improperly disciplined her children. Under those circumstances, conjoint counseling was not necessary or proper. Indeed, Mother did not object to the court's finding of reasonable reunification services at the six-month hearing.

The record further establishes the Department properly determined it was not appropriate to commence conjoint counseling as of the 12-month review hearing. Mother had failed to provide documentation of her enrollment in any court-ordered programs. When she met with the social worker to discuss her progress, Mother instead verbally confronted the social worker. Additionally, in her testimony at the 12-month hearing Mother acknowledged she had made almost no effort to visit or communicate with her children and stated she was then willing to attend conjoint counseling only if it was convenient for her in light of her schedule. In sum, substantial evidence supports the court's finding the Department provided reasonable reunification services to Mother.

2. The Juvenile Court Properly Applied the Law Regarding the Issue of Reasonable Reunification Services

Mother contends the juvenile court improperly shifted the burden of proof to her on the issue of reasonable reunification services at the 12-month review hearing. For this claim, Mother seizes on a statement by the court on January 4, 2012 when it set the matter for a contested 12-month review hearing: The court stated Mother set the matter for a contest "to prove to me that [the Department's position is] inaccurate and that . . . the children should be returned to her or she should get further services. . . ."

The court did not shift the burden of proof to Mother at the contested 12-month review hearing on February 22, 2012. The court's earlier statement, made more than a month prior to the contested hearing, was an attempt to explain to the family in simple terms what would occur at the contested hearing. The record does not indicate the court actually imposed burden of proof on Mother or otherwise misunderstood the law at the contested hearing. To the contrary, the court made appropriate findings of fact at the

hearing and properly applied established law in terminating reunification services and setting the section 366.26 hearing.

DISPOSITION

The petition is denied on the merits.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.