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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

K. T., Petitioner, 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.	B268460 (Los Angeles County Super. Ct. No. CK68224)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Terry Truong, Judge. Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Marlene Furth, Melissa A. Chaitin, and Jody Marksamer for Petitioner.

No appearance for Respondent.

Mary C. Wickham, County Counsel, Dawn R. Harrison, Assistant County Counsel, and Kim Nemoy, Deputy County Counsel, for Real Party in Interest.

INTRODUCTION

Petitioner is the mother of nine-year-old S.W., a dependent of the juvenile court. She has filed a petition for extraordinary writ pursuant to rule 8.452 of the California Rules of Court challenging the juvenile court's November 16, 2015 order terminating her reunification services and setting a hearing under Welfare and Institutions Code section 366.26.[1] We conclude there is substantial evidence supporting the juvenile court's decision that S.W. could not be returned to mother's custody, that mother was provided with reasonable services, and that the court did not err by refusing to extend reunification services. We therefore deny the petition.

PROCEDURAL BACKGROUND AND FACTS

Mother and Los Angeles County Department of Children and Family Services (DCFS) set out in their papers the complete history of the lengthy juvenile court proceedings in this case. Repetition is not required except when necessary to address the specific claims for extraordinary relief.

A. *Petition and Jurisdiction*

On March 25, 2014, DCFS initiated dependency proceedings on behalf of then-seven-year-old S.W. and her younger brothers, one-year-old M.H. and infant D.C.[2] D.C. was born in February 2014 with a positive toxicology screen for marijuana. Mother also tested positive for marijuana at D.C.'s birth.[3] The court detained

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1 All further statutory references are to the Welfare and Institutions Code.

2 S.W.'s brothers are not the subject of this writ proceeding.

3 Prior to filing the dependency petition, DCFS intervened on an informal basis and created a safety plan whereby mother agreed to drug test on demand and not smoke in the presence of her children. But in March 2014, mother tested positive for marijuana and cocaine, which prompted DCFS to file a dependency action.

In 2007, when she was eight months old, S.W. was the subject of a prior dependency petition. The juvenile court released S.W. to mother's custody on condition that mother test clean for drugs. But mother absconded with the child. After they were located, mother was arrested and the child was detained into DCFS custody. In May 2008, the juvenile court declared S.W. a dependent of the juvenile court based upon

all three children from mother's custody, released the boys to the custody of their respective fathers, and detained S.W. with her maternal aunt.

In June 2014, the court sustained the petition and ordered individual counseling for S.W. Mother was ordered to participate in a parenting course, individual counseling, and a drug and alcohol program with random testing. The court further ordered monitored visits and that mother visit her children three times per week for three hours each visit.

B. *Six-Month Review Hearing*

For the December 2014 six-month review hearing, DCFS reported that in April 2014 the social worker referred mother to the DCFS drug linkage unit so that she could be assigned to an appropriate drug program, but mother refused. In June 2014, mother enrolled in Divine Healthcare Services for drug treatment. DCFS conducted a team meeting and told mother to enroll in a DCFS-approved program, but mother still refused. In October 2014, mother re-enrolled in Divine Healthcare Services. Mother missed nine tests from May until December 2014, tested negative once, and in October 2014 tested positive for marijuana.

DCFS arranged for mother to have three-hour visits with the children each Wednesday at the DCFS office. From June 25 to July 30, 2014, mother failed to visit her children on four occasions, with the children often left waiting for her at the DCFS office. When she did show she visited for only one hour and left early, was on her phone constantly, and did not interact with the children. After July 30, mother did not contact DCFS for any more visits until October 2014, as the court hearing approached. She started visiting regularly after that, but would only stay for 30-60 minutes and then left.

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mother's drug use and the parents' domestic violence. While mother eventually completed the case plan, she failed to make herself available to DCFS, was noncompliant with drug testing, and was not timely in participating in services. By the time mother completed the plan S.W. had already been placed in her father's custody. The court terminated the case and awarded father sole physical custody.

At the review hearing, the court ordered the children to remain in their placements and that DCFS provide further reunification services. It also ordered S.W. to be enrolled in counseling.

C. *Twelve-Month Review Hearing*

By the time of the 12-month contested review hearing on July 15, 2015, S.W. was in foster care. Since mother's re-enrollment in Divine Healthcare Services, she continued to miss classes, but was testing negative for drugs. She continued to miss her weekly visits with the children, and when she did attend she would leave early.

By then, S.W. was in individual therapy. Her therapist was concerned because mother appeared very disconnected from S.W., did not engage with her, and during visits gave S.W. her cell phone to play with and only paid attention to the boys. S.W. expressed concern about her mother's lack of visitation. She said, " 'I was hoping that my mother cared enough to come visit me today.' " When the other children were unable to attend a visit, mother refused to visit S.W. alone. Though mother had S.W.'s caregiver's phone number, she never called to talk to her daughter.

DCFS advised that mother completed her treatment program on June 25, 2015, but did not participate in the aftercare program as advised by her counselor.

For her May 20, 2015 visit, mother stayed for only an hour. She ended the visit early claiming she had to go to a drug test, but the testing facility was only five minutes away and was open for two more hours. Mother did not attend a planned visitation for May 27, 2015. On June 5 she called to confirm a visit but then cancelled. S.W. was very upset at the turn of events because she wanted to show mother the certificates and medals she received for excellent school performance. On June 10, mother visited her daughter but again left a half hour early. She once arrived after the 15-minute grace period, but DCFS permitted the visit anyway. When the social worker went to bring the children to mother, mother already had left the DCFS office and did not return.

To sum up, from May to July 2015, mother cancelled several visits, and met with daughter usually every other week for 30 minutes to an hour even though she was entitled

to three, weekly two-to-three hour visits. Mother continued to accept phone calls during the visits.

The juvenile court found mother in partial compliance with the case plan and ordered DCFS to provide further reunification services. The court also ordered mother to participate in S.W.'s Wraparound (wrap) services or conjoint counseling with the child.[4] The court found DCFS had provided reasonable reunification services.

D. *Eighteenth-Month Review Hearing*

For the 18-month review hearing on September 24, 2015, DCFS reported that mother had changed her phone number and had not contacted DCFS for months. Also, mother's mail was returned and the social worker's attempts to contact her in person were unsuccessful.

From July 15, 2015, mother apparently did not visit S.W. Mother was now five months pregnant. Mother did see S.W. at counseling. The social worker finally was able to contact mother and arrange mother's conjoint counseling sessions with S.W. The first appointment was on August 17. Mother attended sessions for a few weeks, but failed to show on August 31. However, mother was attending wrap meetings, but even then she appeared disconnected from the child and had to be told to sit next to her. During the meetings, mother would lose focus and start talking about the boys and justifying why she no longer wanted to see them.

Mother was now participating in an aftercare drug program, which she was scheduled to complete in October 2015, assuming she attended all of her classes. DCFS continued to express concern about the lack of bonding between mother and S.W. Mother still had not telephoned S.W. and had to be reminded by the therapist to hug

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[4] "Wrap" services refer to services provided for children at risk of a group home placement or who have special medical, mental health, or scholastic needs. DCFS contracts with a variety of wrap agencies to provide extra support for such children (http://dcfs.co.la.ca.us/katieA/wraparound/index.html).

daughter and interact with her. Mother also started missing therapy sessions and was arriving late to others. Because DCFS recommended terminating reunification services, the court set the matter for a contested hearing. DCFS recommended terminating services, and the court set the case for a contested hearing.

DCFS's interim review report for the November 16, 2015 contested hearing indicated the social worker had no contact with mother since the last court hearing on September 24 because mother had once again changed her phone number and did not notify the social worker until late October. The conjoint counselor was no longer available to provide therapy so those sessions stopped. Mother was permitted to have visits with the child two to three times per week, but despite letters confirming the visitation schedule, mother never called the social worker to arrange visitation.

A new therapist was assigned on October 21 and the first conjoint session was scheduled for November 3. S.W. said she wanted to return to mother's custody, but wondered why her mother never called her or wanted to visit her. Mother continued to avoid having one-on-one interactions with S.W. and had a history of inviting family members to conjoint counseling sessions, despite S.W.'s desire to have some quality time with mother alone.

Mother testified she completed her aftercare treatment program. The program required her to attend weekly sessions. Mother stated that she was sober and addressed in treatment how to remain sober. She also completed parent education and individual counseling. Mother went to individual counseling sessions twice a week for six months. She also attended Narcotics Anonymous meetings.

Mother admitted conjoint counseling with S.W. started late, but stated that was due to the departure of the prior counselor. She also admitted to attending only three conjoint counseling sessions with the current therapist and had about four sessions with the prior therapist. Regarding the negative reports about mother's visits, mother claimed there was a lot of conflict between her and the social worker. Mother did not believe the visits

should have been monitored by the social worker. Mother expressed love for S.W. and a desire to resume custody of her.

Mother's counsel argued S.W. should be returned to mother's custody, that she had completed every aspect of the case plan, that recent visits had been going well, and the lack of recent conjoint counseling sessions was not mother's fault. Counsel argued DCFS did not provide reasonable reunification services because of the lack of sufficient conjoint counseling. S.W.'s attorney reported that S.W. wanted to return to mother's custody, but agreed DCFS had met its burden and joined in the recommendation to terminate family reunification services and keep S.W. in out-of-home care at that time.

County counsel observed that while mother said she wanted S.W. back, she had failed to visit her consistently throughout the entire reunification period. Mother also did not have much of a relationship with the daughter. The case service logs indicated mother failed to show up for many visits, and even the therapist commented that mother was not very interested in S.W., had no relationship with her, and had to be forced to engage with her daughter. Even S.W. noticed mother's absenteeism and stated that although she would like to return home, she wondered why mother never cared enough to call or visit her.

The court terminated reunification services and set a section 366.26 hearing to select and implement a permanent, out-of-home plan for the child. The court found that while mother's progress with the drug abuse portion of the case was satisfactory, her compliance with conjoint counseling was only partial. The court found DCFS complied with the case plan by providing reasonable reunification services.

The court stated its concern that after the May 2015 12-month review hearing mother displayed a lack of interest in her daughter:

"What I was hoping to see is a more consistent pattern of visitation by [mother]. [¶] I recognize the fact that it has gotten better more recently, but I question the fact of whether that is because there is court date coming up or whether [mother] really has been and is interested in visiting with her daughter. [¶] I recognize the fact as well that she

has another child. She's currently pregnant. And there may be other issues in [mother's] life at this point. But in order for me to feel comfortable returning [S.W.] to [mother], I would prefer to see more conjoint counseling in place between the mother and child. [¶] Given that this is actually beyond the 18-month date, this is now the 20th-month date in this case, reunification serviced are terminated for [mother]."

This timely writ petition followed.

DISCUSSION

Mother contends the juvenile court erred in terminating reunification services because (1) there is no substantial evidence to support the decision that S.W.'s return to mother's custody would create a risk of detriment to S.W., (2) there is no substantial evidence supporting the court's finding that DCFS provided reasonable services, and (3) the court should have extended services beyond 18 months based upon exceptional circumstances. We disagree.

A. *Substantial Evidence Supports the Finding of Detriment*

Typically, when a child is removed from a parent, the child and parent are entitled to 12 months of child welfare services in order to facilitate family reunification services, which may be extended to a maximum of 18 months. (§ 361.5, subd. (a).)

Section 366.22 provides that within 18 months after a dependent child was originally removed from the physical custody of his parent, a permanency review hearing must occur to review the child's status. At the hearing, "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.22, subd. (a).)

The juvenile court's determination is reviewed for substantial evidence. (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 763.) "Substantial evidence" means such evidence as a reasonable mind might accept as adequate to support a conclusion. (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) In reviewing the evidence,

we must construe it in the light most favorable to the juvenile court's determination, resolve all conflicts in support of the court's determination, and indulge all inferences to uphold the court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020-1021; *In re Michael G.* (1993) 19 Cal.App.4th 1674, 1676; *In re Rocco M.*, at p. 820.)

The mere completion of the technical requirements of the reunification plan is not the sole consideration when deciding whether to return the child to the parent. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 704; *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140.) "At the section 366.22 hearing, a trial judge can consider, among other things: whether changing custody will be detrimental because severing a positive loving relationship with the foster family will cause serious, long-term emotional harm . . . ; whether the natural parent maintains relationships with persons whose presence will be detrimental to the [child] . . . ; limited awareness by a parent of the emotional and physical needs of a child . . . ; failure of a minor to have lived with the natural parent for long periods of time . . . ; and the manner in which the parent has conducted himself or herself in relation to a minor in the past." (*Constance K.*, at pp. 704-705, citations omitted.)

Also, the detriment justifying continued removal need not be the same as the initial detriment. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 899.) The focus of the decision whether to return the child to parental custody depends on the effect that action would have on the physical or emotional well-being of the child at the time of the review hearing. (*Ibid.*) "[I]f returning the child will create a substantial risk of detriment to his or her physical or emotional well-being, placement must continue regardless of whether the detriment mirrors the harm which had required the child's removal from parental custody." (*Id.* at p. 900.)

We reject mother's assertion that there is no substantial evidence to support the juvenile court's finding of detriment. Throughout the 20 months of reunification services provided to her, mother essentially failed to comply with the visitation schedule given to her and as a result failed to develop a relationship with her daughter. During the first six

months her visitation compliance was so poor that DCFS implemented a policy whereby mother had to call to confirm 24 hours in advance or the visit would be cancelled. Many times mother would fail to show up, leaving the children waiting for her at the DCFS office. As the review hearing approached mother's visitation compliance got a bit better. But while she started attending visits regularly, she stayed for only 30 minutes to an hour. And during the visits, mother was on her phone constantly and would not interact with the children. She sent several text messages to the social worker stating that if D.C. was not at the visit, she would not attend, even to see the older children.

By the 12-month review hearing, mother continued to miss her weekly visits and left early during the visits she did attend. S.W.'s therapist and the social worker observed that mother appeared very disconnected from S.W., she did not engage with her daughter, and during the visits would give S.W. her cell phone to play with and only paid attention to the boys. This no doubt had an effect on S.W., who expressed, " 'I was hoping that my mother cared enough to come visit me today.' " When the other children were unable to attend a visit, mother refused to visit S.W. alone. And even though mother had S.W.'s caregiver's phone number, she never called her daughter.

Nothing changed by the time of the 18-month review hearing. Mother failed to keep in touch with DCFS or provide her contact information, and failed to visit S.W. Because of the lack of contact, conjoint counseling sessions could not be scheduled until August 17, 2015. Though the therapist stated mother showed affection for the child, mother only attended three or four sessions. Mother missed sessions and then the therapist became unavailable. A new therapist was assigned about six weeks later, but the interruption in services was also due to mother once again not keeping in contact with DCFS and failing to provide current contact information. Mother had only three sessions with the new therapist.

Even when mother attended wrap meetings she appeared unbonded to S.W. and had to be told to sit next to her. During the meetings mother would lose focus and start

talking about the boys. Mother still had not telephoned S.W. And, even though she always was permitted to have visits with S.W., failed to schedule them.

S.W. told the social worker in late October that she wanted to return to mother's custody, but also said, "I wonder why she does not call or want to visit with me." Mother continued to avoid having one-on-one interaction with S.W. and had a history of inviting family members to conjoint counseling sessions, despite S.W.'s desire to have some on-on-one quality time with her mother.

In sum, while mother completed the drug portion of her case plan, she was noncompliant with the visitation portion and essentially failed to demonstrate any desire to form a bonding relationship with her daughter. Thus, the juvenile court rightly determined it could not go from monitored visits that were scarcely attended to retuning S.W. to mother's full custody.

Implicit in the court's determination is the finding that mother's failure to bond resulted in a limited awareness of her own daughter's emotional needs. (See *Constance K. v. Superior Court*, *supra*, 61 Cal.App.4th at pp. 704-705.) Indeed, the record bears that out, as S.W. emotionally expressed a desire to spend time with her mother and be returned to her, only to be repeatedly disappointed by her mother's failure to visit, call her, or give her the attention she craved.

Under the circumstances, there is ample evidence to support the juvenile court's finding that returning S.W. to her mother at the time of the 18-month hearing would have been detrimental to S.W.'s emotional well-being.

B. *Substantial Evidence Supports the Finding of Reasonable Services*

Mother argues DCFS (1) failed to set up and maintain S.W. in individual counseling "in order for mother to be able to participate in a sufficient number of conjoint counseling sessions [and] provide the court with a letter from the conjoint counselors," and (2) failed to provide mother with monitored visits that were monitored by someone other than the social worker and outside the DCFS office, and did not liberalize mother's visits. These arguments are unpersuasive.

We review the juvenile court's reasonable services finding for substantial evidence (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971), bearing in mind that in "almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 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." (*Ibid.*; *Robin V. v. Superior* Court (1995) 33 Cal.App.4th 1158, 1164 [the reasonableness of DCFS's efforts are judged according to the circumstances of each case].)

The case plan ordered by the juvenile court was for mother to participate in a drug treatment program with random testing, parenting education, individual and conjoint counseling, and monitored visitation with her children.

The record shows DCFS made substantial efforts to arrange visits for mother with all the children, having all three transported to a single location at the DCFS office so the visits could occur together. After mother complained about having visits at the DCFS office, the social worker arranged for visits outside the office with an approved monitor other than the social worker. After two outside visits, mother complained about that location as well. Because mother's monitored visits were generally unsatisfactory, DCFS had no occasion to recommend unmonitored visits.

Mother complains that DCFS delayed enrolling S.W. in individual counseling. It is true S.W. was not enrolled by the six-month hearing in December 2014, she was in counseling by at least April 2015. Given mother's failure to complain to the court at the six-month review hearing about the lack of S.W.'s counseling, and because mother was not even compliant with her drug plan during those first six months, mother has not shown how S.W.'s lack of enrollment in individual counseling during that time adversely impacted mother's efforts to reunify.

As to mother's claim that DCFS "failed to set up and maintain [S.W.] in individual counseling in order for the mother to be able to participate in conjoint counseling with [S.W.]," DCFS is correct that mother does not support this contention with a citation to

the record, nor is it supported by the record. The record shows the social worker was delayed in arranging conjoint counseling because mother did not contact her. Twice mother changed addresses and phone numbers without notifying DCFS. The gap in conjoint counseling after the first therapist left was also due primarily to mother being out of contact with the social worker. Mother did attend three or four sessions, then stopped attending regularly and again disappeared. A new counselor was assigned in October 2015, and the first session was on November 3, 2015. Finally, mother has not demonstrated that progress reports from the therapists would have produced a different outcome in the juvenile court.

We conclude that if mother believed DCFS was not taking sufficient strides toward arranging conjoint counseling, she was required to raise such concerns so the juvenile court could address the situation and consider another plan. Mother's objection at the last review hearing came too late. (See *Los Angeles County Dept. of Children Etc. Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093 [a parent may not "wait silently by until the final reunification review hearing to seek an extended reunification period based on a perceived inadequacy in the reunification services occurring long before that hearing"]; *In re Christina L.* (1992) 3 Cal.App.4th 404, 415-416 ["The law casts upon the party the duty of looking after his legal rights and of calling the judge's attention to any infringement of them"]; *Menefee v. County of Fresno* (1985) 163 Cal.App.3d 1175, 1182 [it is unfair to the trial court and the adverse party to give appellate consideration to an alleged procedural defect which could have been presented to, and may well have been cured by, the trial court].)

C. *The Court Did Not Err in Declining to Extend Services*

Mother lastly contends the trial court erred because it did not extend reunification services beyond the 18-month statutory period. Not true.

The juvenile court may order a limited extension of services beyond 18 months in *extraordinary circumstances*. (See *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1795-1796 (*Elizabeth R.*); *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1777 (*Dino E.*); *Mark N. v.*

Superior Court (1998) 60 Cal.App.4th 996, 1016-1017.) A court's decision regarding extending services beyond the 18-month deadline is reviewed for abuse of discretion. (*In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1211.)

Elizabeth R. provides an excellent example of truly extraordinary circumstances. Mother was mentally disabled, under a conservatorship, and hospitalized for treatment of her mental illness during much of her dependency case. Despite this fact, her record of visitation was "exemplary," she had substantially complied with her case plan even though her enormous efforts were rebuffed by her social workers, and she had consistently maintained contact with her social workers. The appellate court concluded the juvenile court erred by failing to recognize that under such "unusual circumstances" it had discretion to extend reunification services beyond the statutory 18-month deadline. (*Elizabeth R.*, *supra*, 35 Cal.App.4th at pp. 1777, 1795-1796.)

Mother has not demonstrated that *Elizabeth R.* or other cited cases are applicable here or that the juvenile court abused its discretion. Mother's contention is that an extension was appropriate because DCFS failed to make reasonable efforts to assist her to participate in conjoint counseling. We have rejected that claim on the merits, but even if true, on this record, mother has not shown exceptional circumstances requiring extension of services beyond the 20 months already provided.[5]

DISPOSITION

The petition is denied. This opinion is final forthwith as to this court pursuant to rule 8.490(b)(2)(A) of the California Rules of Court.

RUBIN, J.

WE CONCUR:

BIGELOW, P.J. FLIER, J.

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[5] We also observe that even though reunification serviced were correctly terminated, the court did liberalize mother's visits to unmonitored, thus providing mother one more opportunity to develop a mother-daughter relationship before the section 366.26 hearing.