Filed 3/12/12 In re Antoinette I. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re ANTOINETTE I., A Person Coming Under the Juvenile Court Law.	B233961 (Los Angeles County Super. Ct. No. CK76836)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. BERNADETTE I., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Donna Levin, Juvenile Court Referee. Affirmed.

Janice A. Jenkins, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Peter Ferrera, Senior Deputy County Counsel, for Plaintiff and Respondent.

Appellant Bernadette I. (mother) appeals following the termination of her parental rights with respect to her daughter, Antoinette I. (Antoinette), born in November of 2008. Mother contends that there was insufficient evidence for the trial court to find that the Department of Children and Family Services (DCFS) provided reasonable reunification services to her. As a result, the trial court was not authorized to set a permanent plan selection hearing. Mother seeks a reversal of the order terminating her parental rights and an order requiring DCFS to offer and provide her with at least six more months of family reunification services.

As we find that the record contains evidence sufficient to support the trial court's ruling, we will affirm.

FACTUAL AND PROCEDURAL BACKGROUND[1]

In late November of 2008, DCFS received a referral from Harbor UCLA Medical Center regarding Antoinette at the time of her birth. The hospital social worker, Kelli Armstrong (Armstrong), reported that mother tested positive for methamphetamines and marijuana. Armstrong also reported that mother was having delusional thoughts that she was a member of the CIA and the FBI. Armstrong stated that mother admitted to using methamphetamines about a week prior to Antoinette's birth because she believed it would induce labor. Armstrong also reported that, despite not having received any prenatal care, Antoinette appeared healthy and did not have any withdrawal symptoms. Mother admitted to DCFS that she had a seven to eight year history of using MDMA,

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[1] The factual and procedural background was taken from the record which consists of two volumes of Clerk's Transcripts and two volumes of Reporter's Transcripts.

crack, heroine, marijuana and methamphetamines but she denied having a drug problem. Additionally, mother stated she tried an inpatient drug program in the past and was clean for nearly seven months but relapsed due to "peer pressure."

After a Team Decision-making Meeting, mother agreed to a six-month Voluntary Family Reunification contract, beginning on November 24, 2008. Under this contract, Antoinette was placed in a foster home; mother agreed to enter an inpatient substance abuse program; mother was allowed monitored visitation at a minimum of three times a week; mother agreed to not breastfeed Antoinette and mother agreed to randomly test for drugs.

Unfortunately, mother failed to comply with the terms of the Voluntary Family Reunification contract. During the five month period when the contract was in place, mother visited Antoinette only once on December 26, 2008. She cancelled all of the other visits. Mother did not enroll in any substance abuse program nor did she test for drugs. During a call with Antoinette's foster mother in January of 2009, mother admitted to continuing her drug use. Mother was in jail from January 24, 2009 until February 3, 2009. Despite several attempts to contact mother at the phone number she provided, DCFS was unable to reach her and mother made no known attempts to contact DCFS.

Mother's failure to comply with the terms of her contract led DCFS to file a Welfare and Institutions Code[2] section 300 petition on behalf of Antoinette on April 8,

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[2] All section references are to the Welfare and Institutions Code unless otherwise noted.

2009. DCFS sent notice of the detention hearing to mother at her last known address. At the hearing, the court found that such notice on mother was legally sufficient; however, mother failed to appear and attend the hearing. The trial court then found that DCFS made a prima facie case for Antoinette's detention and ordered her detained. It also ordered DCFS to present evidence of due diligence in attempting to locate both mother and Alan B.,[3] Antoinette's alleged father.

The trial court sustained the petition as pled on May 18, 2009 and declared Antoinette to be a dependent of the court. DCFS sent notice of the hearing on the petition to mother at her last known address and the trial court again found that such notice was sufficient under the law. Mother again failed to appear and attend the hearing, however. The trial court ordered (1) DCFS to provide mother with family reunification services; (2) mother to enroll in drug counseling, weekly random drug testing, and aftercare; (3) mother to enroll in parenting classes; (4) mother to have a mental health/psychological assessment and follow the recommendations of her counselor; and (5) mother to have monitored visits with Antoinette that DCFS can liberalize as applicable. The trial court then set a section 366.21, subdivision (e), hearing for November 16, 2009 with the parties to return to court without further order, notice or subpoena.

DCFS's November 16, 2009 status review report indicated that mother's whereabouts were unknown, as she had moved from her last known address sometime during the previous summer and left no forwarding address. DCFS completed a due

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[3] Alan B. did not appear in the case below and is not a party to this appeal.

diligence search for mother without success. However, on November 12, 2009, the Los Angeles Sheriff's Department informed DCFS that mother was in custody after being arrested on August 10, 2009 and criminally charged with possession of narcotics. The trial court continued the hearing to the following day to allow mother to be present. On the next day, mother appeared in custody and the trial court set the matter for a contested section 366.21, subdivision (e), hearing on January 15, 2010. Mother was ordered to return to court on that date without further order, notice or subpoena. Mother was released from custody on December 11, 2009 but she did not contact DCFS nor did she contact the foster mother caring for Antoinette. Upon discovery that mother had been released from custody, DCFS began a new due diligence search for her.

At the section 366.21, subdivision (e), hearing held on January 15, 2010, mother failed to appear and the trial court found that she was not in compliance with court orders that she participate in treatment, counseling and testing and that she had not visited Antoinette once since the petition was filed in April of 2009. It also found that reasonable reunification services had been offered by DCFS and terminated mother's family reunification services over her counsel's objections. The trial court ordered DCFS to provide a section 366.26 notice to mother and set a hearing. The hearing was continued several times in order for DCFS to complete a home study and to address issues relating to the foster mother who intended to adopt Antoinette.

Mother appeared at the February 4, 2011 hearing, the first time since November of 2009 when she was in custody, seeking further visitation with the Antoinette. The trial court found that further visitation with mother, who had not seen Antoinette since

December of 2008 except for a single unauthorized visit in January of 2011 that did not go well, would be emotionally detrimental to the child because the child does not know who mother is. The trial court stated with respect to mother's calling Antoinette and telling her that she is going home with mother, "This is emotionally detrimental for a two-year old to be told that she's going [home] with a person who is a stranger in her life." The trial court then entered a "no visitation" order over mother's objections.

Mother's parental rights were terminated on April 1, 2011 at the section 366.26 hearing. This appeal followed.

CONTENTIONS

Mother contends that DCFS failed to provide her with reasonable family reunification services and, therefore, the trial court's finding at the section 366.21 six-month hearing[4] that reasonable services were provided is erroneous. She argues further that because such services were not provided, under section 366.26, subdivision (c)(2)(A),[5] the trial court's order terminating her parental rights must be reversed.

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[4] The order terminating mother's reunification services was made in conjunction with the setting of a section 366.26 hearing. Although challenges to an order that includes the setting of a section 366.26 hearing are generally not cognizable on appeal from an order terminating parental rights, an exception applies in cases in which the appellant was not given notice of the right to seek review via an extraordinary writ. (§ 366.26, subd. (l); *In re Cathina W*. (1998) 68 Cal.App.4th 716, 719-720; see also Cal. Rules of Court, Rule 5.590, subd. (b).) It is undisputed by the parties that no notice of the right to seek review via an extraordinary writ was given to mother. Therefore the exception applies here and we take the matter into consideration.

[5] Section 366.26, subdivision (c)(2), provides, "The court shall not terminate parental rights if: [¶] (A) At each hearing at which the court was required to consider

DISCUSSION

1. *Standard of Review*

" '[W]henever a minor is removed from a parent's . . . custody, the juvenile court shall order the probation officer to provide child welfare services . . . to the . . . parents . . . for the purpose of facilitating reunification of the family . . . . ' [Citation.] Each reunification plan must be appropriate to the particular individual and based on the unique facts of that individual. [Citations.]" (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*Id.,* at p. 547.) "We construe all reasonable inferences in favor of the juvenile court's findings regarding the adequacy of reunification plans and the reasonableness of [DCFS's] efforts. [Citation.]" (*In re Julie M.* (1999) 69 Cal.App.4th 41, 46.) "[W]ith regard to the sufficiency of reunification services, our sole task on review is to determine whether the record discloses substantial evidence which supports the [trial] court's finding that

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reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided. . . . " Section 366.21, subdivision (e), provides that, "If the child is not returned to his or her parent or legal guardian, the court 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."

reasonable services were provided *or offered*." (*Angela S. v. Superior Court* (1995) 36 Cal.App.4th 758, 762; italics added.)

2. *Substantial Evidence Supports the Trial Court's Finding that DCFS Made Reasonable Efforts to Provide Reunification Services to Mother*

Mother contends that the record does not contain evidence sufficient to support the finding that DCFS provided her with family reunification services.[6] We disagree.

The record is replete with evidence that DCFS offered services to mother, but mother consistently failed to take advantage of such services, to stay in contact with DCFS and keep DCFS apprised of her current address, or even to visit her daughter. In April or May of 2009, a DCFS Human Services aid located mother at her San Pedro address and instructed mother to call the DCFS social worker who had been ordered to offer reunification services to her. However, mother failed to do so. Additionally, mother failed to keep her appointment on May 9, 2009 with the DCFS Dependency Investigator. In July of 2009, DCFS attempted to contact mother in person but found

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[6] In support of her contention, mother makes the following peculiar assertion. She argues that her "whereabouts were unknown from April 2009, when the petition was filed" but DCFS "did not recommend that services be bypassed pursuant to subdivision (b)(1) of section 361.5." She then asserts that DCFS "simply sat out the six-month reunification period and then informed the court that [mother] had 'not complied' with the court's orders and had not contacted [DCFS] to 'discuss [her] plans.' " This assertion is meritless. Had DCFS reported to the trial court that mother's whereabouts were unknown, it would not have needed to offer her the services that she now contends she did not receive. (§ 361.5, subd. (b)(1).)

Mother also argues that the trial court improperly considered DCFS's actions and her actions (or her failures to act) pursuant to the Voluntary Family Reunification contract in determining whether DCFS provided reasonable reunification services. We need not address this issue as we discuss *post* that the record contains ample evidence after the section 300 petition was filed of mother's failure to comply with the reunification plan, to stay in contact with DCFS and to visit with her daughter.

her residence vacated. When DCFS called the telephone numbers mother provided, she neither answered nor replied to messages left for her. After DCFS diligently tried to contact mother via phone on numerous occasions and it became apparent that mother was no longer living at her last known address, it initiated a due diligence search for her. When DCFS discovered mother was in custody due to her arrest for possession of narcotics, DCFS traveled to her place of incarceration in January of 2010 to interview her only to discover mother had previously been released and failed to let DCFS know. DCFS initiated yet another due diligence search for mother after she could not be located after her release from custody. When mother was not in custody, she repeatedly failed to attend dependency hearings. In January of 2011 when mother finally reappeared, despite offering no evidence of her compliance with the court's orders relating to the reunification plan, she demanded visitation with Antoinette. The entire time that the reunification plan was in place, Antoinette remained in the same foster home, which was known to mother, yet mother only visited her one time since the petition was filed – months after the reunification plan had been terminated.

As we note above, DCFS is only required to make " ' "[a] good faith effort" to provide reasonable services responding to the unique needs of each family.' [Citation.]" (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472.) "Reunification services are voluntary, and cannot be forced on an unwilling or indifferent parent. [Citation.]" (*In re Jonathan R.* (1989) 211 Cal.App.3d 1214, 1220.) DCFS is not required to "take the parent by the hand and escort him or her to and through classes or counseling sessions." (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) "There is

nothing in the statutory scheme to support [the] assertion" that DCFS is required to "continually [track a parent] throughout the dependency process." (*In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.) DCFS only "has a duty initially to make a good faith attempt to locate the parents of a dependent child. Once a parent has been located, it becomes the obligation of the parent to communicate with [DCFS] and participate in the reunification process." (*Id.*)

The record contains ample evidence on which the trial court could base its finding that DCFS offered to provide mother with reunification services and that such an offering was reasonable under the circumstances. Mother simply failed to take advantage of any services offered or otherwise make a meaningful effort to reunify with Antoinette.

DISPOSITION

The order is affirmed.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

KITCHING, J.