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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re IRENE G. et al., Persons Coming
Under the Juvenile Court Law.

B236902
(Los Angeles County
Super. Ct. No. CK38059)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

MARIA S.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Jacqueline Lewis, Commissioner. Affirmed.

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

John F. Krattli, Acting County Counsel, James M. Owens, Assistant County Counsel, and Jeannette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

Maria S., mother of twins Irene G. and Alicia G. (hereinafter Mother and the twins), appeals from the order of the juvenile court denying reunification services. We affirm.

BACKGROUND

I. Petition May 18, 2011

A petition filed May 18, 2011 by the Los Angeles County Department of Children and Family Services (DCFS) alleged that the twins, then two years old, were at risk of harm under Welfare and Institutions Code¹ section 300, subdivision (b) (failure to protect and inability to provide regular care due to substance abuse), by Mother and by father Stewart G. (hereinafter Father).² The petition also alleged that Mother endangered the twins' health with a filthy and unsanitary home. Mother had a 10-year history of using amphetamine and methamphetamine, tested positive on May 12, 2011, and had been under the influence previously while the twins were in her care. The twins' older half sibling Emilio S. was receiving permanent placement services due to Mother's drug abuse, and the twins' sibling Abraham G. (hereinafter Abraham) was receiving permanent placement services due to Mother's and Father's drug abuse.³

The petition detailed Mother's prior dependency cases. Her oldest child J.W., also a half sibling of the twins, was declared a dependent of the court in 1999 due to Mother's failure to provide for her basic needs. Emilio S. was declared a dependent in 2001 and the twins' sibling Abraham was declared a dependent in 2005, both due to Mother's (and in Abraham's case, Father's) drug abuse. The juvenile court had terminated reunification services as to each of J.W., Emilio S., and Abraham. Maternal grandmother (MGM) had been granted legal guardianship of the three children.

¹ All subsequent statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Father is not a party to this appeal.

³ Mother had five children, three with Father (the twins and Abraham). Emilio S. and J.W. had different fathers.

Mother came to DCFS's attention again in May 2011, after a referral called into the child abuse hotline alleged that Mother was smoking methamphetamine in a trailer on the property where MGM resided with Mother's three older children. The caller also observed a baggie with white powder in the yard, and the children, loud and crying, were up late with Mother. When a social worker responded to MGM's residence on May 11, 2011, she met with Mother, who identified herself and said MGM was recovering from back surgery. When the social worker entered MGM's home, she found it unkempt and dirty, with trash and food all over the living and kitchen area, and general disorder elsewhere. Mother apologized and said that she was trying to help MGM but was having difficulty keeping up with chores.

MGM was in bed, and when interviewed by the social worker, she said she was not aware of Mother using drugs but would not know it if she was. MGM did not know where Mother lived with the twins, where she went with them, or where they slept; Mother only came by to take her to medical appointments. When MGM saw the twins, they seemed unhurt and in good health. MGM had purchased the trailer for the twins to play in, and she denied that Mother lived there. MGM believed Mother's former boyfriend, Roberto, had called in the report because Mother had a new boyfriend.

The social worker interviewed Emilio S., then age 10, who reported that Mother lived in the home with them, and the twins sometimes spent the night there too. Emilio S. denied seeing any drug use by Mother or anyone in his home. Abraham, then age seven, reported that his mother lived in the trailer with the twins, who also sometimes stayed in MGM's house. Abraham denied seeing Mother use drugs (he was not sure what drugs were). J.W., then age 16, denied any drug use by Mother or seeing any white powder in baggies, and said that Mother lived in the trailer for about a year, came over during the day to help MGM, and sometimes slept in the house.

Informed of the allegations, Mother admitted that she had started using methamphetamine again in August 2010 when she was with Roberto, but had a different boyfriend now. She had used last weekend. Mother explained that she had completed drug rehabilitation programs in the past but had relapsed. She did not have a place to

live, and stayed with friends or with Father. She also sometimes snuck into the trailer on MGM's property and spent the night there.

The social worker went to the trailer, which was parked in the driveway. Mother's current boyfriend Mario A., who was on parole, was in the trailer and denied that he and Mother used drugs in the trailer or that he lived at the property. The trailer had one full-size bed and men's jackets hanging in the closet. Mother stated that when she stayed in the trailer, the twins slept on a sofa next to the bed, and MGM did not know she was there. A foul smell came from a container of urine that could not be dumped. The twins' clothing was folded in a large plastic bag behind MGM's house.

MGM continued to claim that Mother did not live in the home, although the twins sometimes stayed over. The social worker reminded MGM that she had been told not to have Mother reside in the home, as Mother had failed to reunify with her three older children.

On May 12, 2011, Mother was tested for drugs, and the social worker received a positive result for amphetamines and methamphetamines, with comments indicating an invalid result due to specific gravity less than or equal to 1.0010. Father reported that he had little contact with the twins, and he had just completed a program through Proposition 36 and was off probation.

In addition to the petition seeking detention of the twins from Mother's custody, DCFS also filed a section 387 petition⁴ on behalf of the twins' sibling and half-siblings, seeking their detention from MGM's custody.

The twins were detained from Mother's custody and placed into foster care, with monitored visits by Mother. The other children were detained from MGM's custody.

⁴ Section 387 provides for the filing of a supplemental petition for an order changing or modifying a previous custody order.

II. Jurisdiction/Disposition Report June 21, 2011, and Supplemental Report August 12, 2011

Mother was interviewed again, and admitted to a long history of using drugs, resulting in the loss of her three older children. She completed a program and was clean ““for a long time,”” but recently relapsed, only using once. Mother had gone into a rehabilitation program while pregnant with Emilio but did not complete it. She became overwhelmed after her mother’s back surgery and ended up using again. She reported that she was on a waiting list for a drug program at Foley House, and hoped to regain custody of the twins. All five children were physically healthy and developing normally.

The parties reached a mediated agreement on the section 387 petition regarding the three older children, agreeing to six months of reunification services for MGM and unmonitored visitation.

A supplemental report on August 12, 2011 reported that the twins remained in foster care. MGM had enrolled in parenting skills classes and was linked to Al-anon support groups, in what appeared to be a sincere effort to have Mother’s three older children returned to MGM’s care. Mother had admitted herself into an inpatient program at Foley House, and could not have any visitation for the first 30 days. On that same date, MGM pleaded no contest to the section 387 petition, and the court sustained the petition, removed the three siblings from MGM’s custody, and provided reunification services for MGM, but not for Mother.

III. Disposition Report and Hearing August 17, 2011

The disposition report stated that Abraham told his foster parent that a man named Roberto had exposed himself to Abraham within the last year, while Abraham was living with Mother. MGM stated that she knew “Robert” as Mother’s friend, who frequented but did not live in the home. Abraham said that Roberto lived in the trailer with Mother. This was more evidence of Mother’s inadequate supervision of the children. Father had completed a drug treatment program, but MGM reported he reeked of alcohol when he came to her home within the last few weeks. The disposition report recommended that

the children all be declared dependents of the court, with no reunification services to either parent.

At the hearing on August 17, 2011, Mother testified that she had enrolled in the inpatient drug treatment program just over two weeks earlier on August 1, and had been drug tested 12 times since. She had not been tested by DCFS between the initial positive test in May 2011 and her entry into the inpatient treatment program, because there was a mixup with the paperwork. She had enrolled in an outpatient program in mid-July the year before, and had participated in others. Mother was attending Alcoholics Anonymous meetings five times a week. She had been an addict for 15 years, and this was her first inpatient program. When she relapsed in May, she was helping her mother take care of her children.

The department requested no reunification services for Mother and Father. This was Mother's fourth petition, she continued to abuse substances, and had not made reasonable efforts to treat her problem. Mother's other children were in legal guardianship with MGM and Mother did not reunify with them. She had resisted prior treatment, and was only now participating in an inpatient treatment program. The children's counsel did not recommend reunification services to either Mother or Father.

Mother's counsel acknowledged that Mother had not reunified with the other children. Although she had an extensive drug history, Mother had for the first time entered an inpatient treatment program, which was more intensive than an outpatient program. It was not clear that she would complete it, but "I think the prognosis is good," and Mother had tried to drug test through DCFS before she entered the program. Counsel argued that these were reasonable efforts to remedy the problems that caused her not to reunify with her three older children.

Counsel also argued that it would be in the children's best interests for Mother to receive reunification services, as "we have these children in a total of three different placements." (The twins were together, but their sibling and half siblings were in two separate foster care placements.) If Mother could maintain her sobriety for a long period of time and "us[ed] what she's been able to accomplish during reunification, from this

point forward,” she could file a section 388 petition⁵ for the other children and the court could “maintain [the] family completely.” Counsel for DCFS rejoined that because of Mother’s 15-year drug history, more than six months were necessary to determine whether she could maintain her sobriety.

The juvenile court sustained the section 300 petition as alleged, and declined to order reunification services for Mother, based on section 361.5, subdivisions (b)(10) and (b)(13). Mother had been in and out of programs since 1999, and although she had been in an inpatient program for just over two weeks, that did not constitute a reasonable effort to treat the problems that led to the removal of the twins’ siblings. The court also found that Mother had a history of extensive and chronic drug abuse, and she had resisted treatment during the three-year period before the filing of the petition. The court granted monitored visitation (by someone other than MGM), and stated: “if Mother stays in the program and does well, I will certainly entertain a [section] 388 at some point.”

Mother appeals from the denial of reunification services.

DISCUSSION

“The juvenile court is required to order family reunification services whenever a child is removed from the custody of his or her parent or guardian unless the court finds by clear and convincing evidence that one of the 15 exceptions set forth in section 361.5, subdivision (b), applies.” (*In re Albert T.* (2006) 144 Cal.App.4th 207, 217; § 361.5, subd. (a).) Section 361.5, subdivision (b)(10) authorizes the court to deny reunification services if the court finds: “That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent or guardian failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat

⁵ Section 388 provides that a parent may petition the court in the same action to set aside a previous order “upon grounds of change of circumstance or new evidence.”

the problems that led to removal of the sibling or half sibling of that child from that parent or guardian.” To apply this subsection, the juvenile court must find that “(1) the parent previously failed to reunify with a sibling [or half-sibling] and (2) the parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling” or half-sibling. (*In re Albert T.*, at p. 217.) ““The inclusion of the “no-reasonable effort” clause in the statute provides a means of mitigating an otherwise harsh rule that would allow the court to deny services simply on a finding that services had been terminated as to an earlier child when the parent had in fact, in the meantime, worked toward correcting the underlying problems.’ [Citation.]” (*Id.* at p. 218.) “Section 361.5 authorizes, but *does not require*, the court to deny services in the specified circumstances. Even if the court had sufficient evidence to conclude that [Mother]’s efforts to address her drug problem were insufficient to that point, it could nonetheless have focused on the fact she had made significant changes in her lifestyle since the removal of her other children, and determined that further efforts to deal with the problem would not have been ‘fruitless.’” (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.)

Mother does not challenge the court’s conclusion that she had not made reasonable efforts to treat her drug abuse, the problem that led to the removal of the twins’ sibling Abraham and their half siblings J.W. and Emilio S.⁶ Her sole argument is that reunification with her would be in the twins’ best interests, and therefore the court abused its discretion in denying her reunification services.

“Once the juvenile court finds that one or more of these subparts of subdivision (b) applies, the court is prohibited from ordering reunification services unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.”

⁶ Nor does Mother appeal from the court’s finding that section 361.5, subdivision (b)(13) applied (parent or guardian has extensive history of chronic drug use and has resisted or refused to comply with prior treatment). We therefore do not address that subsection. We note that DCFS incorrectly characterizes the order dated August 17, 2011, as referring only to section 361.5, subdivision (b)(10); the order refers to section 361.5, subdivision (b)(13) as well.

(*In re Ethan N.* (2004) 122 Cal.App.4th 55, 64; § 361.5, subd. (c).) ““Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]”” (*Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744.) “The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child.” (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.) “[T]he [appellate] court cannot reverse the juvenile court’s determination, reflected in the dispositional order, of what would best serve the child’s interest, absent an abuse of discretion. [Citation.]” (*In re Ethan N.*, at p. 65.)

“To determine whether reunification is in the child's best interest, the court considers the parent’s current efforts, fitness, and history; the seriousness of the problem that led to the dependency; the strength of the parent-child and caretaker-child bonds; and the child's need for stability and continuity. [Citation.] A best interest finding requires a likelihood reunification services will succeed; in other words, ‘some “reasonable basis to conclude” that reunification is possible. . . .’ [Citation.]” (*In re Allison J.* (2010) 190 Cal.App.4th 1106, 1116.)

At the hearing, Mother argued that reunification would be in the twins’ best interests because, if she could maintain sobriety for a long while, she could file a section 388 petition for the other children and the court could “maintain [the] family completely,” presumably by granting reunification to Mother with J.W., Emilio S., and Abraham, as well as the twins. The juvenile court was not persuaded, and neither are we. Mother’s efforts at the time of the hearing consisted of two weeks in a residential treatment program. Her history demonstrated at least 10 years of drug abuse and relapse after outpatient treatment. The problem leading to the dependency of the twins (methamphetamine use) was serious, and the problem was long-standing. Mother presented no evidence of the strength of her bond with the twins, or the twins’ bond with her other children, with whom she had failed to reunify years ago. Because of that failure to reunify, the twins had never lived with their sibling and half-siblings (outside of occasionally staying together at MGM’s home), and so stability and continuity for the

twins did not require that all five children live together. Further, Mother’s best interests argument presumes that she would reunify not only with the twins, but with the three children who were subjects of separate dependency proceedings years earlier (in 1999, 2001, and 2005), a highly unlikely prospect.⁷ “Substance abuse is notoriously difficult for a parent to overcome, even when faced with the loss of her children. [Citation.]” (*In re William B.*, *supra*, 163 Cal.App.4th at p. 1228.)

Mother did not demonstrate how providing her with reunification services would be in the best interests of the twins. The juvenile court did not abuse its discretion in denying reunification services to Mother as to the twins.

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J.

CHANEY, J.

⁷ Mother argues that because MGM was complying with her case plan for reunification with the three older children, and a possible placement for all the children was with MGM, “[o]ffering [M]other reunification services would ensure the children would be able to stay together.” To the contrary, it was MGM, not Mother, who offered a possibility that all five children could live together.