

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.D., a Person Coming Under the
Juvenile Court Law.

2d Juv. No. B238515
(Super. Ct. No. J1395330)
(Santa Barbara County)

SANTA BARBARA COUNTY CHILD
WELFARE SERVICES,

Plaintiff and Respondent,

v.

B.W.,

Defendant and Appellant.

B.W. (Mother) appeals an order of the juvenile court terminating reunification services. (Welf. & Inst. Code, § 366.21, subd. (e).)¹ We affirm.

FACTUAL AND PROCEDURAL HISTORY

Mother and Jacob D. (Father) are the parents of J.D. J.D. was born in 2008 and was under three years old when she was detained.

On March 22, 2001, Santa Barbara County Child Welfare Services (CWS) filed a dependency petition alleging that J.D. was at risk of serious harm or illness as a result of her parents' failure or inability to provide adequate supervision or protection,

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

that she was at risk of serious emotional damage as a result of her parents' conduct, and that she had been left without adequate provision for support due to Father's incarceration. (§ 300, subds. (b), (c) & (g).)

In the report prepared for the detention hearing, a CWS social worker stated that she was called to J.D.'s home at 3:30 a.m., on March 21, 2011, by Lompoc police officers after a domestic violence incident between Mother and Father. Mother was hospitalized. According to the detention report, Father was arrested for "felony domestic violence and possible attempted murder." Both were intoxicated. The social worker found the home unclean. J.D.'s clothing and diaper were wet. J.D. had access to drug paraphernalia and marijuana was growing in a closet. A police officer reported that Mother kicked down the front door and stepped on Father's back, and Father choked her, causing her to defecate on herself and leaving her neck bruised and her eyes red with broken blood vessels. J.D. was present. When officers arrived, Father was in bed with J.D. He was holding a knife. Mother denied kicking down the front door or stepping on Father's back. The social worker recommended that J.D. be detained and that the parents receive reunification and maintenance services.

At the time Mother was on probation for resisting arrest. She had two prior contacts with CWS, both arising from altercations with other boyfriends.

On March 23, 2011, the juvenile court detained J.D. in confidential foster care and ordered CWS to provide services and visitation. Both parents appeared for the detention hearing. Father was in custody on domestic violence charges.

On April 14, 2011, CWS filed a jurisdiction and disposition report. Father admitted that he and Mother had substance abuse problems. Mother denied she had substance abuse problems. They gave conflicting accounts about their altercation.

On May 26, 2011, the juvenile court held a jurisdiction and disposition hearing. Mother and Father were present. Upon agreement of the parties, the court sustained the allegations of the dependency petition, continued J.D. as a dependent

child, and ordered that the parents receive reunification services. The allegation that Father was incarcerated was dismissed because he had been released on bail.

Mother's case plan allowed her four hours per week of visitation. It required her to remain free of intoxicating substances, obtain a legal and verifiable source of income and housing, participate in a domestic violence support group one time per week, comply with random drug testing and a substance abuse assessment, document participation in any recommended substance abuse treatment, and participate in individual or couples counseling. Father's case plan included similar services and requirements, and required him to participate in a batterer's intervention or anger management program.

Mother had positive visits with J.D. in the first month of services. She then missed visits with J.D. on June 24, 27, and 29.

On July 12, 2011, J.D.'s foster parent fractured J.D.'s femur while they were "play wrestling." The social worker learned this as she was preparing to supervise a visit with Father. She drove Father to the hospital to comfort J.D. She was unable to reach Mother, whose telephone had been disconnected. That evening, she drove to Mother's home. Three people were there smoking marijuana, but they said Mother was not home. The social worker saw them hiding a glass pipe and foil.

On July 13, 2011, J.D. had surgery with general anesthesia, and was placed in a full body cast. The social worker spoke to Mother, who called her at about 11:30 a.m. She asked Mother to submit to a drug test within 30 minutes. Mother said she was busy and hung up. The social worker drove to Mother's home, but Mother was not there. She called Father and asked him to come to the hospital to be with J.D. during recovery. He took the bus to the hospital and the social worker supervised him while he comforted J.D. Mother submitted to a drug test at 3:00 p.m., and the test was "inconclusive." The social worker told Mother about J.D.'s broken leg and told her she could not visit while Father was there due to a restraining order. Mother became very

upset. According to the social worker, she said, "So, you're going to allow a murderer to have him? After all the work I did"

The social worker agreed to provide Mother with a supervised visit on July 14, subject to drug testing. She drove Mother to a testing facility that day, but Mother refused to submit to the test. The relationship between Mother and the social worker became strained. On July 21, Mother requested a visit but would not agree to test. On July 27, Mother called the social worker's supervisor and asked to file a formal complaint. The supervisor asked her to come to the office, but she did not. Mother had no further visits with J.D.

On August 1, 2011, CWS filed an interim review report concerning these events. CWS requested to change the court-ordered case plan to require Mother to undergo random weekly drug testing. The matter was set for hearing on August 25. On August 4, the social worker learned that Mother had been arrested on July 25, 2011, for public intoxication. She filed an addendum to her report to include this information. The social worker also reported that Mother had not met with her to arrange visitations, although she had invited Mother to meet, had visited her home, and had sent her a letter about the visits. She reported that Father had regular and consistent bi-weekly supervised visits with J.D., one of which was in a therapeutic session. Father was appropriate, and J.D. enjoyed the visits. They appeared to be bonded. Father worked with a counselor and started unsupervised visits on August 18. His criminal case was unresolved.

Mother did not appear for the hearing on August 25, 2011. Her counsel stated, "I've tried to reach my client. The phone number I have for her doesn't work. I'm not sure why she's not here." The juvenile court continued the matter to September 1, 2011, and ordered Mother to be personally present.

On September 1, Mother did not appear for the continued hearing on the interim report. Her counsel reported that her efforts to locate Mother, "so far, have not

been successful." The juvenile court adopted the amended case plan and ordered Mother to participate in random weekly drug testing.

In October 2011, the district attorney amended the criminal charges against Father from domestic violence to attempted murder, and Father was remanded to jail pending trial.

On November 17, 2011, CWS filed a six-month status review report and recommended that the juvenile court terminate reunification services to Mother, but continue services to Father. The report stated that Mother stopped visiting J.D. in July and refused to submit to drug testing, she continued to deny any need for substance abuse treatment, she did not attend parenting classes as required, and she did not provide evidence of participation in a domestic violence support group. Mother was evicted from her apartment in August. CWS had been unable to contact her in the intervening three months.

An addendum to the status review report provided additional information. On November 17, 2011, Mother contacted the social worker for a new substance abuse referral, which the social worker gave her. On November 29, Mother left a voice mail message for the social worker stating that she had completed an intake assessment but would speak to her attorney before deciding whether to enroll. The provider recommended inpatient treatment, which Mother refused. The provider reported that Mother had "flushed" her system before testing. Mother refused to take an additional test.

On December 15, 2011, the juvenile court conducted a six-month review hearing. Mother had not visited J.D. for more than five months. Mother and the social worker testified. Mother expressed her concerns that the social worker did not give her any sympathy as a victim, and favored Father, who was a "murderer." Mother testified that she had new housing, for which she had paid six months advance rent using money from a victim witness program; that she had completed a medical assistance training program; that she had part-time employment as a house cleaner; that she had a clean

drug test on December 5, 2011; and that she does not believe she has a substance abuse problem. She testified that her social worker "doesn't want to give [her] a chance." She said, "It's very hard for me to communicate with someone who doesn't think that I'm a victim; it's very hard to face that for me."

The juvenile court found that CWS had provided reasonable services, Mother had made minimal progress toward mitigating the causes that necessitated placement, and Father had made substantial progress. The court terminated services to Mother and continued services to Father. The court found by clear and convincing evidence that Mother failed to participate regularly and make substantive progress in the court-ordered treatment plan. The court acknowledged that Mother had made some progress by obtaining training and housing, but found that she had not made reasonable efforts to meet the goals and objectives of her case plan. The court explained that whether or not Mother perceived that CWS was biased in favor of Father, Mother was obligated to follow the case plan; and if she felt it was insufficient to meet her needs, she should have moved to modify it.

DISCUSSION

Termination of Services to One Parent

Mother contends that the juvenile dependency statutory scheme does not allow for termination of reunification services as to only one parent if services continue for the other. We disagree.

Section 366.21, subdivision (e) allows a juvenile court to terminate reunification services for one parent, regardless of the fact that reunification services continue for the other parent. (*In re Jesse W.* (2007) 157 Cal.App.4th 49, 65.) We decline Mother's invitation to adopt the contrary view expressed in the dissenting opinion, which overlooks the context of section 366.21, subdivision (e). (*Jesse W.*, at pp. 67-68 (dis. opn. of J. McDonald).)

Section 366.21, subdivision (e) provides, in part, "If the child was under three years of age on the date of the initial removal, . . . the court may schedule a

hearing pursuant to Section 366.26 [upon a finding of failure to make substantive progress]" or "the court shall continue the case to the 12-month permanency hearing [upon a finding of substantial probability of return]." "If the child had been placed under court supervision with a previously noncustodial parent," "[t]he court may terminate supervision and transfer permanent custody to that parent" (*Ibid.*) "In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered . . . pursuant to the time periods set forth in subdivision (a) of Section 361.5" (*Ibid.*) From these excerpts, Mother concludes that the juvenile court must continue services unless it sets a section 366.26 hearing.

Mother overlooks the time periods of section 361.5, subdivision (a). A parent of a minor under age three may not receive more than six months of services unless there is a substantial probability the minor will be returned to that parent's physical custody. (§ 361.5, subd. (a)(2); *In re Jesse W.*, *supra*, 157 Cal.App.4th at p. 63.) And the statutory scheme allows services to one parent and not the other, where appropriate. (E.g., §§ 361.2, subd. (b)(3), 361.5, subds. (b) & (e).) The "statutory scheme as a whole, compels the conclusion that at a six-month review hearing, the juvenile court retains the discretion to terminate the offer of services to one parent even if the other parent is receiving services and no section 366.26 hearing is set." (*Jesse W.*, at p. 58.)

Reasonableness of Services Offered to Mother

There is sufficient evidence that CWS offered sufficient and adequate services to Mother to remedy the problems that led to the loss of custody of J.D. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345.) CWS provided services to solve the parenting, substance abuse, and domestic violence problems that led to J.D.'s removal. Mother did not participate in those services. Her animosity toward her social worker was not a valid excuse. Mother did not follow through with her complaint to the worker's supervisor. Moreover, she began missing visits with J.D.

in June, before the time she testified that her relationship with her social worker became difficult.

We reject Mother's contention that CWS did not offer reasonable services to address her victimization. The case plan required Mother to participate in a victim support group and in individual or couples counseling. Mother received support from the victim witness assistance program. She was represented by counsel and agreed to the case plan without requesting any additional services. She never sought modification of the case plan. She did not appear at the hearing to challenge modification of the plan to add drug testing and treatment services. At the six-month review hearing, the juvenile court asked counsel several times, "What services has she not been provided?" and counsel did not identify any omitted service. The services were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

DISPOSITION

The order is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Arthur A. Garcia, Roger T. Picquet, Judges

Superior Court County of Santa Barbara

Roni Keller, under appointment by the Court of Appeal, for Defendant and Appellant.

Dennis A. Marshall, County Counsel, Sarah A. McElhinney, Deputy County Counsel, for Plaintiff and Respondent.