Filed 3/30/11 In re A.E. CA1/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.E., a Person Coming Under the Juvenile Court Law. _____ HANNAH G., Petitioner, v. THE SUPERIOR COURT OF SONOMA COUNTY, Petitioner; SONOMA COUNTY HUMAN SERVICES DEPARTMENT, FAMILY, YOUTH AND CHILDREN, Real Party in Interest.	A130806 (Sonoma County Super. Ct. No. 3391-DEP)

Hannah G. (mother) petitions this court for an extraordinary writ pursuant to Welfare and Institutions Code section 366.26 and California Rules of Court rule 8.452, seeking review of the juvenile court's order denying her reunification services and setting the matter for hearing to implement a permanent plan for her daughter, A.E. (minor).[1] Mother seeks this relief on the ground that there was insufficient evidence in the record to support the juvenile court's bypass of services. We deny the writ petition.

[1] Unless otherwise stated, all statutory citations herein are to the Welfare and Institutions Code, and all references to rules are to the California Rules of Court.

FACTUAL AND PROCEDURAL BACKGROUND

On July 26, 2010, a petition was filed pursuant to section 300, subdivisions (d) and (j), alleging that minor, born in December 2005, had been sexually abused by her father, that mother knew or should have known minor was in danger of sexual abuse yet continued to allow unsupervised visits between minor and her father, and that minor's siblings had also been sexually abused by father (hereinafter, section 300 petition). The section 300 petition also alleged that minor's siblings or half-siblings had been removed from the home and declared dependents of the juvenile court and that, in 2004, mother's and father's parental rights to the siblings had been terminated.

On July 27, 2010, the juvenile court found, among other things, that a prima facie case had been established with respect to the allegations in the section 300 petition, and that no reasonable means were available to protect the minor's health and safety without removing minor from her parents' physical custody.

A jurisdiction/disposition hearing was scheduled for August 18, 2010. In anticipation of this hearing, Erica Altobelli, the investigating social worker for real party in interest, Sonoma County Human Services Department (the department), prepared a report setting forth the relevant facts with respect to the allegations in the section 300 petition (hereinafter, the report). The report advised that, on or about May 25, 2010, minor disclosed to mother that father had digitally penetrated her vagina. In response, on May 29, 2010, mother contacted law enforcement, which scheduled an interview with minor at the Redwood Children's Center. However, mother cancelled this interview, advising the department that minor later recanted her story. At the same time, mother advised the department that she believed minor's allegations, which were similar to those made by one of minor's siblings in 2004, but did not want to traumatize her by making her undergo the interview.

Subsequently, on July 23, 2010, minor was in fact interviewed by a specialist at the Redwood Children's Center. Minor did not disclose any sexual abuse, however, she acknowledged sometimes sleeping in father's bed. She also acknowledged that father sometimes makes her feel scared or uncomfortable, and that she had told this to her

mother. Minor was interviewed again by the specialist at the Redwood Children's Center on July 28, 2010; however, allegations of sexual abuse were not discussed and minor made no further disclosures. The case was thereafter suspended pending further information. According to the report, the department was ultimately unable to fully assess the situation relating to minor's sexual abuse because mother failed to fully cooperate.

The report acknowledged that mother had made some improvements with respect to providing a safe home for her children since the 2004 dependency proceedings involving minor's siblings. In particular, the department praised her decision to contact law enforcement when minor first reported the sexual abuse by father. However, the report also noted concern about mother's sobriety, given her long history of substance abuse and recent, consistent refusal to undergo drug testing. In addition, the report questioned whether mother could establish her own independence from father, so as to enable her to protect minor from future sexual abuse. According to the report, while mother had in the past asserted some independence from father, at present, she had reverted to her previous position of dependence on him for income and housing.

Finally, the report discussed the family's very extensive child welfare history, including father's past sexual abuse of three of minor's siblings, which mother became aware of during the siblings' dependency proceedings in 2004.[2] At that time, mother stated: "I believe [the abuse] happened to my kids." Mother also described certain behaviors of father that were consistent with sexual abuse, including walking around the house naked, sleeping naked and insisting the children do the same, and "playing a game" that involved the son touching his father's genitals. According to the report, despite mother's awareness of past sexual abuse involving minor's siblings, she appeared "surprised and confused" by minor's allegation of abuse "remarkably consistent" with the abuse of her siblings, and continued to allow minor to spend time with her father without supervision. Thus, the report ultimately recommended that, because mother had failed to

[2] Father pleaded no contest to sexual abuse allegations by minor's siblings in 2004.

make reasonable efforts to treat the problems that led to minor's siblings' removal in 2004, reunification services should not be afforded to her in this case.

At the contested jurisdiction/disposition hearing, which commenced on November 30, 2010, the juvenile court heard testimony from mother, Altobelli and others. In addition, judicial notice was taken of certain documents from the 2004 dependency proceedings involving minor's siblings, which reflected, among other things, that the allegations of sexual abuse of the siblings by father had been sustained.

In particular, mother testified at the hearing that she was "trouble[d]" by the prior sexual abuse allegations against father, and that, as a result, she initially limited minor's contact with him. Mother eventually allowed more contact, but usually accompanied minor on overnight visits with father. However, mother acknowledged that at least three visits between minor and father had been unsupervised. Mother also acknowledged that she believed father was a pedophile, and that minor's allegations of sexual abuse were true.

Altobelli, in turn, testified that mother had repeatedly rebuffed her efforts to meet regularly regarding the dependency by cancelling several meetings and failing to return phone calls. Mother also had consistently refused drug testing despite her history of substance abuse. Further, mother had ignored Altobelli's numerous attempts to discuss mother's participation, if any, in community programs intended to facilitate her reunification with minor. According to Altobelli, without mother's demonstrated engagement in services or participation in the dependency process, the social worker was left without any basis for changing her recommendation that the juvenile court bypass services for her.

Following the contested hearing, on December 16, 2010, the juvenile court found by a preponderance of the evidence that minor had been sexually abused by her father, and that mother knew or should have known minor was at risk when leaving her in father's unsupervised care. The juvenile court then denied reunification services to mother and father, and set the matter for a permanency planning hearing on April 14, 2011. In doing so, the court found clear and convincing evidence that mother and father

had failed to reunify with minor's siblings or half-siblings, that their parental rights with respect to the siblings had been terminated, and that they had not subsequently made reasonable efforts to treat the problems that had led to the siblings' removal.

On December 27, 2010, mother filed a timely notice of intent to file a writ petition.

DISCUSSION

Mother challenges the December 16, 2010, dispositional order on the ground that the evidence was insufficient to support the juvenile court's decision to deny her reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11). Specifically, mother contends the trial court's decision was erroneous because the evidence was insufficient to prove she failed to make reasonable efforts to address the problem that led to the removal of minor's siblings. The following legal principles are relevant.

"When a child is removed from parental custody, the juvenile court must order reunification services to assist the parents in reuniting with the child. (§ 361.5, subd. (a).) However, if certain of the circumstances set forth in section 361.5, subdivision (b), are established, 'the general rule favoring reunification is replaced by a legislative assumption that offering [reunification] services would be an unwise use of governmental resources.' (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478 [73 Cal.Rptr.2d 793]; see *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 744 [110 Cal.Rptr.2d 828, 28 P.3d 876].)" (*K.C. v. Superior Court* (2010) 182 Cal.App.4th 1388, 1393.)

Relevant here, section 361.5, subdivisions (b)(10) and (b)(11), provide that "(b) Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence . . . [¶] . . . [¶] (10) 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 the problems that led to removal of the sibling or half sibling of that child from that parent or guardian. [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent." (§ 361.5, subds. (b)(10), (11).)

As this statutory language reflects, to deny a parent reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11), the parent must have previously failed to reunify with one or more siblings or half siblings of the minor and had his or her parental rights over the siblings or half-siblings terminated, and the parent must have subsequently failed to make reasonable efforts to correct the problem or problems that led to the siblings' removal from the parent's custody. Thus, "[i]n enacting section 361.5, subdivision (b)(10), 'the Legislature has made the decision that in some cases, the likelihood of reunification is so slim that scarce resources should not be expended on such cases.' [Citation.] 'Inherent in this subdivision appears to be a very real concern for the risk of recidivism by the parent despite reunification efforts.' [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96. See also *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.)

On appeal, we review a juvenile court's denial of reunification services pursuant to section 361.5, subdivision (b), for substantial evidence. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 600; *Cheryl P. v. Superior Court, supra,* 139 Cal.App.4th at p. 96.) In doing so, "we may look only at whether there is any evidence, contradicted or uncontradicted, which supports the trial court's determination. We must resolve all conflicts in support of the determination, and indulge in all legitimate inferences to uphold the court's order. Additionally, we may not substitute our deductions for those of the trier of fact." (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) Ultimately, our task is to decide whether a reasonable trier of fact, considering the

entire record, could properly have made the challenged decision. (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.)

Here, as set forth above, the juvenile court denied mother reunification services pursuant to section 361.5, subdivisions (b)(10) and (b)(11), after finding by clear and convincing evidence that mother had failed to reunify with minor's siblings or half-siblings and had her parental rights to them terminated, and that she thereafter failed to make reasonable efforts to treat the problem – namely, father's sexual abuse – that had led to these siblings' removal. Having considered the record as a whole and in a light favorable to the challenged order (*Elijah R. v. Superior Court*, *supra*, 66 Cal.App.4th at p. 969), we conclude clear and convincing evidence does indeed exist to support the juvenile court's decision.

As an initial matter, mother does not deny the first prongs of section 361.5, subdivisions (b)(10) and (b)(11) have been met, as, undisputedly, she previously failed to reunify with several of minor's siblings and then had her parental rights to them terminated. Mother does, however, deny the second prong of these provisions has been met – that she subsequently failed to make reasonable efforts to address the problem that led to the siblings' removal. We disagree.

"The 'no reasonable effort' clause provides a means of mitigating a harsh rule that would allow the court to deny services based only upon the parent's prior failure to reunify with the child's sibling 'when the parent had . . . in the meantime, worked toward correcting the underlying problems.' (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 842 [23 Cal.Rptr.3d 207].)" (*Cheryl P. v. Superior Court*, *supra*, 139 Cal.App.4th at p. 97.) In this case, however, the record proves that mother has not done the necessary work to correct the underlying problem or problems that led to her previous failure to reunify with minor's siblings. Specifically, there is evidence in the record that, in 2004, allegations were sustained that father had sexually abused three of minor's siblings, and that mother was aware of such abuse yet failed to take adequate steps to prevent it. Further, as a result of these sustained allegations, minor's siblings were removed from

parents' custody and parental rights terminated. At that time, mother acknowledged "[the sexual abuse] happened to my kids."

Nonetheless, in 2010, the department's social worker reported that mother appeared "surprised and confused" by minor's allegations that father had also sexually abused her, even though minor's abuse was "remarkably consistent" with that reported by her siblings during their 2004 dependency proceedings. Even more troubling, the social worker reported that mother continued to allow minor to spend time with her father without supervision despite her acknowledgement of his prior sexual abuse of the siblings.

In addition, mother herself testified at the contested jurisdiction/disposition hearing that, while she was "trouble[d]" by the siblings' sexual abuse allegations and initially limited minor's contact with father because she feared his abuse, she allowed more contact over time, including at least three visits between minor and father that were unsupervised. Mother also initially refused to allow law enforcement to interview minor, and for a full two months following minor's disclosure of sexual abuse, failed to take her to counseling. This is despite the fact that mother, at the hearing, labeled father a pedophile, and repeatedly acknowledged her belief that minor's allegations of sexual abuse were true.

Finally, the investigating social worker testified that mother had repeatedly rebuffed her efforts to meet regularly regarding the dependency, had repeatedly refused drug testing despite her history of substance abuse, and had ignored her several requests for information relating to whether mother had accessed the reunification services being made available to her in the community. Without mother's demonstrated engagement in services or participation in the dependency process, the social worker was left without any basis for changing her recommendation that the juvenile court bypass services for her.

This record, we believe, provides clear and convincing evidence supporting the juvenile court's finding that mother has failed to make reasonable efforts to treat the problem – namely, taking the steps necessary to avoid subjecting the minor to her ex-

husband's ongoing sexual abuse of children – that led to the removal of minor's siblings, and thus that a very real concern exists for the risk of recidivism by mother despite any further reunification efforts in this case. (*In re Baby Boy H., supra*, 63 Cal.App.4th at p. 478; cf. *Cheryl P. v. Superior Court*, *supra*, 139 Cal.App.4th at pp. 97-98.)

In reaching this conclusion, we acknowledge, as both mother and the juvenile court point out, that mother's decision to contact law enforcement when minor first reported the sexual abuse is commendable. We also agree with mother that her actions in this regard are at least somewhat probative of her progress in providing a safe home for her children since the siblings' 2004 dependency proceedings. However, as explained above, our task in reviewing the juvenile court's order is not to simply credit mother's initial actions in reporting minor's abuse to law enforcement, or any other evidence favorable to her case. Rather, we must consider the record as a whole and in a light most favorable to the juvenile court's order in deciding whether there is clear and convincing evidence supporting the order. (*In re Baby Boy H.*, *supra*, 63 Cal.App.4th at p. 478.) And, based on the evidence already discussed, including mother's acknowledgement of father's pedophilia, her allowance of unsupervised visits between minor and father despite being troubled by his history of sexual abuse, and her failure to cooperate or participate meaningfully in this dependency, we conclude there is in fact such evidence.

Accordingly, under the legal principles set forth above, we conclude the juvenile court's dispositional order must stand, and that mother's writ petition must therefore be denied.

DISPOSTION

The petition for extraordinary writ is denied.

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Jenkins, J.

We concur:

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McGuiness, P. J.

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Pollak, J.