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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**In re WALTER M. III, a Person Coming
Under the Juvenile Court Law.**

**WALTER M. II,
Petitioner,**

v.

**SUPERIOR COURT OF THE
COUNTY OF SOLANO,**

Respondent.

**SOLANO COUNTY DEPARTMENT
OF CHILD WELFARE SERVICES,**

Real Party in Interest.

A130954

**(Solano County
Super. Ct. No. J39819)**

Walter M. III (Walter) was declared a dependent child of the juvenile court and removed from the custody of his father, Walter M. II (father). Father seeks writ review of an order terminating reunification services and setting the case for a permanency planning hearing under Welfare and Institutions Code section 366.26.¹ (Cal. Rules of Ct., rule 8.452.) He argues that Walter should have been returned to him because there was

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

no substantial risk of detriment, and that alternatively, the court should have ordered another six months of reunification services. We deny the writ.

I. FACTS AND PROCEDURAL HISTORY

A. Detention

In November 2009, father contacted the Vallejo Police Department and claimed that 22-month-old Walter had been taken from him and his girlfriend at gunpoint by the child's adult half-siblings. He explained that Walter's 19-year-old half-brother was upset because he had seen father panhandling in the rain with Walter. Father's girlfriend, June Y., reported that she had been at a gas station with Walter when his half siblings pulled up and took the child at gunpoint, but she later recanted her statement about the gun and said she no longer wished to press charges.

Walter was found unharmed at the home of his maternal grandmother. His half brother, who was also at the home, explained that he and his sister had been driving to Target when they saw Walter standing in the rain with June. They stopped and told June it was wrong to keep their brother outside in the rain, and took Walter back to their grandmother's house. When Walter arrived at his grandmother's, he was cold, wet and hungry. Several family members had seen June panhandling with Walter.

Police officers visited the motel room where Walter was living with father and June. The room smelled of urine and feces and was in a "deplorable" condition, with garbage, drug paraphernalia, knives and pornography strewn about. The paraphernalia included a crack pipe and a Brillo pad, and crack cocaine residue was found on the nightstand. The toilet did not function and there was no baby food, diapers or other items needed to care for a child. Father and June both claimed that they did not use drugs, and father suggested the housekeeper might have left the paraphernalia in the room. Father initially acknowledged living in the motel room, but after police expressed concern about its horrible condition, he insisted that he lived with Walter at his sister's house. His sister denied that father and Walter lived with her, and told police that father, June and Walter had been moving from motel room to motel room for several months. She was concerned that father was a closet drug user due to his appearance, symptoms and lifestyle.

Walter's mother, who is not a party to this writ proceeding, was in prison for drug offenses and had an extensive criminal history involving substance abuse and violence. Walter was taken into protective custody.

B. Jurisdiction/Disposition

The Solano County Department of Child Welfare Services (Department) filed a petition alleging that father's living environment and actions placed Walter at a substantial risk of serious physical harm. (§ 300, subd. (b).) The juvenile court declared Walter a dependent of the juvenile court, removed him from father's custody, and ordered that reunification services be provided to father.² Mother was denied reunification services, but father was given a case plan that required him to visit Walter on a supervised basis; to obtain the resources necessary to provide a safe home for Walter; to complete a parenting class and demonstrate an ability to parent; and to stay free from illegal drugs and to submit to a hair strand test for drugs to determine whether a substance abuse assessment would be necessary. Though father was bald, he had been advised that hair could be extracted from other areas of his body.

C. Six-Month Review

At the six-month review hearing held in August 2010 (§ 366.21, subd. (e)), the Department recommended that Walter remain in out-of-home care and that father receive another six months of reunification services. The social worker's report stated that father had been visiting Walter weekly and that the visits were going well; that father had attended parenting classes; and that he had tested negative for drugs during random urine tests. Father had been instructed to undergo a drug treatment assessment, having failed to submit a sample for a hair strand analysis, but he had not yet done so. He was receiving services from the Family Resource Center in Vallejo and was currently on the waiting list for Section 8 housing. Based on this information, the court ordered an additional six months of reunification services.

² The petition contained additional allegations against Walter's mother.

D. Twelve-Month Review Hearing

In the report prepared for the 12-month review hearing scheduled for January 2011 (§ 366.21, subd. (f)), the Department recommended that services be terminated and the case set for a permanency planning hearing under section 366.26. Father was living in a motel in Vallejo, though he had placed a deposit on a one-bedroom apartment and would be working as the custodian of the apartment building. He had missed some visits with Walter and during the visits he did attend, his parenting skills appeared to be minimal, in that he frequently talked on his cell phone and did not consistently interact with his son. Father had tested for drugs only once during the reporting period, in August 2010 (which was negative). He had not submitted to a hair strand analysis and had not obtained a drug treatment assessment in lieu of that analysis, though the social worker had attempted three times to schedule such an assessment. He continued to live with his girlfriend June, but she had not been screened for a criminal history through the “live scan” process as the social worker had requested.

An addendum submitted by the Department reported that father and June had moved into an apartment on December 2, 2010. Two social workers had visited the apartment on January 3, 2010 and found it to be filthy, with spills on the carpet, dirty appliances, an inoperable kitchen faucet, dusty furniture and bedding that needed to be washed. A bookshelf on a dresser and a mirror on top of an entertainment center were unstable and could have fallen on a child. Father and June were in the process of cleaning the apartment.

At the 12-month review hearing held in January 2011, the court received the social worker’s reports into evidence and the social worker was called as a witness. No other evidence was presented. Father’s counsel argued that Walter could be returned home because father had housing and there was no evidence he was currently using drugs. The court disagreed, “It’s not the testing that’s the issue, it’s the drug treatment that’s the issue. That’s a reasonable part of [father’s] case plan from the beginning of the case. He has failed to get himself involved in drug treatment. When he was given the opportunity to obviate the need for treatment by taking a hair strand test, he didn’t do it, so it’s the

treatment that can't be completed in the next time period." The court found by a preponderance of the evidence that the minor could not be returned home, terminated father's reunification services, and set the case for a hearing under section 366.26.

II. *DISCUSSION*

Father argues that Walter should have been returned to him at the 12-month review hearing because he had obtained housing and there was no evidence he was using illegal drugs. We disagree.

At the 12-month review hearing, the juvenile court must return the child to the parent's custody unless it finds by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (f).) The parent's failure to participate regularly and make substantive progress in a court-ordered treatment program is *prima facie* evidence of detriment. (*Ibid.*)

Substantial evidence supports the juvenile court's determination that it would be detrimental to return Walter to his father's care. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1401.) Drug paraphernalia and crack cocaine residue had been found in the motel room where father was living with Walter when Walter was taken into protective custody, and the general squalor of that room was consistent with drug use by the adults living there. Despite this, father claimed he had never in his life used drugs, and his girlfriend denied drug use as well. The court approved a reunification plan that quite reasonably required father to submit to drug testing and to undergo a hair strand analysis to determine whether a drug treatment assessment was necessary. Having failed to submit to a hair strand analysis, father was told to get a drug treatment assessment, but failed to do so. He also failed to submit to random drug tests after August 2010. Substantial evidence supports the conclusion that father could not safely care for Walter due to the unaddressed issues involving his drug use. The unclean and unsafe condition of his current apartment and his lack of parenting skills during visits with Walter further supported the court's ruling.

Father alternatively argues that the court should have extended reunification services for an additional six months. We disagree.

Reunification services are presumptively limited to six months when, as here, the child is under three years of age at the time of removal from the parent's custody. (§ 361.5, subd. (a)(2).) An additional six months of services may be ordered at the six-month review hearing if the court finds a substantial probability the child may be returned home by the time of the 12-month review hearing. (§§ 361.5, subd. (a)(2), 366.21, subd. (e); *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843-847 (*Tonya M.*).) During the period between the 12-month review hearing and the 18-month review hearing (§ 366.22), "services are available only if the juvenile court finds specifically that the parent has 'consistently and regularly contacted and visited with the child,' made 'significant progress' on the problems that led to removal, and 'demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.'" (§ 366.21, subd. (g)(1)(A)-(C).)" (*Tonya M.*, at p. 845.)

At the time of the 12-month hearing in this case, father had stopped drug testing and had failed to obtain a drug treatment assessment as required by the Department. This is not "significant progress" on the problems that led to Walter's removal. Neither the Department nor the juvenile court can compel an unwilling parent to participate in his reunification plan. (See *In re Nolan W.* (2009) 45 Cal.4th 1217, 1233-1234.) Substantial evidence supports the court's determination that father could not complete the necessary drug treatment within the next six months. (See *Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688-689; *James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020.)

III. *Disposition*

The petition is denied. The order to show cause, having served its purpose, is discharged. In the interests of justice, this case shall be become final as to this court on the seventh court day after the filing of this opinion.

NEEDHAM, J.

We concur.

SIMONS, Acting P. J.

BRUINIERS, J.