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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

Corina S. et al.,

Petitioners,

v. **A130958**

THE SUPERIOR COURT OF SAN FRANCISCO COUNTY, **(City & County of San Francisco Super. Ct. No. JD093202)**

Respondent;

SAN FRANCISCO HUMAN SERVICES AGENCY et al.,

Real Parties in Interest.

_____/

Corina S. (mother) and Salvador B. (father) have filed writ petitions under California Rules of Court, rule 8.452[1] challenging an order that sets a hearing under Welfare and Institutions Code section 366.26[2] to determine whether their parental rights as to their son Salvador B., Jr. (Salvador) should be terminated. Mother contends (1) a portion of the juvenile court's ruling is not supported by substantial evidence, and (2) the court misunderstood the scope of its discretion to offer additional reunification services.

[1] All further rule references will be to the California Rules of Court.

[2] All further section references will be to the Welfare and Institutions Code.

Father contends (1) a portion of the court's ruling is not supported by substantial evidence, and (2) the court abused its discretion when placing Salvador. We reject the arguments advanced by mother and father and will affirm the challenged order.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 3, 2009, two San Francisco police officers were on patrol when they saw a car with expired registration tags. The officers stopped the car, and approached the driver, father. As they did, they noticed a four-year-old child in the back seat. The child was not in a car seat and was not wearing a seat belt. His face, hands, and hair were dirty and he smelled strongly of urine. The child was surrounded by garbage and tools and was sitting next to a car battery.

Father identified the boy as his son Salvador. One of the officers conducted a criminal history check and learned that father had been arrested for domestic violence and that he had been ordered to stay away from Salvador and his mother Corina S. Father was arrested.

In July 2009, a petition was filed alleging Salvador was a dependent child within the meaning of section 300. As is relevant here, the petition alleged father had failed to protect the child from abuse and neglect and that mother had failed to protect the child from father's abuse and neglect. In addition, the petition alleged that mother had two older children who had been removed from her care due to substance abuse, domestic violence, and neglect.

The case was set for a jurisdictional hearing. The report prepared prior to that hearing indicated the family faced many challenges. Mother had a history of substance abuse and she had been involved in an abusive relationship with the father of her two older children. Then, when mother began dating father, he acted violently toward her too. On one occasion father beat mother while she was holding Salvador in her arms. A protective order was issued. Father also faced challenges. According to the report, he had a long history of domestic violence and drug possession offenses and had completed a 42-week domestic violence program. It was questionable whether the program had its

desired effect. On two separate occasions after Salvador was detained, father had threatened child welfare workers working on his case.

A jurisdictional hearing was conducted on September 23, 2009. The court found the allegations of the petition to be true, declared Salvador a dependent child, and removed him from his parent's custody. The court ordered mother to complete a parenting class, to refrain from substance abuse, to participate in substance abuse assessment, and to participate in domestic violence counseling. The court ordered father to complete a parenting class, to complete a domestic violence prevention program, and to refrain from threatening child welfare officials.

Father apparently was upset by the court's intervention. He confronted a child welfare worker outside the courthouse and brandished a weapon at her. The police were notified.

The following day, child welfare officials asked the court to suspend visits between father and Salvador. The court granted the request and also granted a restraining order to protect the child welfare workers and other officials assigned to the case.

Mother had little success in complying with the terms of her reunification plan. She completed one drug test, but "missed numerous scheduled tests." She failed to show up for psychological evaluations and therapy sessions. She ignored the attempts of her social worker to contact her.

Father did somewhat better. He was communicating with his social worker, had completed a psychological evaluation, and he was participating in drug testing. However, father also had problems. Father had been incarcerated for a three-month period, and after he was released, he violated his restraining order three times.

The court evaluated mother's and father's progress at a review hearing conducted on March 25, 2010. After hearing the evidence presented, the court ruled Salvador could not yet be returned to his parent's care, but ordered that mother and father continue to receive reunification services.

On June 8, 2010, child welfare officials filed a section 388 petition asking the court to terminate reunification services immediately. The petition stated father had tried

to contact the social worker who was the subject of the protective order. The petition also noted that when father met with a different social worker after a hearing, he had a bullet over his ear. The petition was supported by an evaluation by a psychologist who stated that "due to [father's] poor impulse control, poor insight into the seriousness of his behavior, as well as his history of perpetrating domestic violence and threatening service providers, he is at a relatively high risk of being a danger to others, especially to a 5 year old with special needs." The report also stated that mother had failed to participate in any service other than "occasionally visiting with her son." She had ignored referrals for therapy, a psychological evaluation, substance abuse assessment and testing, parenting classes and domestic violence therapy.

On June 30, 2010, child welfare officials submitted an updated status report to the court. It noted father was in custody for violating the restraining order and for drug possession. It also noted that a social worker had tried to speak with mother on the phone, but mother had hung up on her. The report said mother had never provided her home address and that she was unaccounted for most of the time which raised "major concerns about her ability to function as a parent."

Another status report was filed on October 8, 2010. Again it showed mother and father had made little progress toward reunifying with Salvador. Father was in custody on felony drug charges. Mother was in jail too. Mother still had not participated in any reunification services other than occasionally visiting with Salvador.

A review hearing was conducted on December 6, 2010. Both mother and father testified on their own behalf. Mother stated she knew she was required to participate in services before she could reunify with her son, but claimed that circumstances had prevented her from doing so. Father admitted that he was incarcerated and that he had been placed in a psychiatric ward, although he denied it was due to outstanding mental health issues. Father asked that Salvador be placed with his aunt, Ms. B.

The trial court evaluating this evidence found that returning Salvador to his parent's custody would create a substantial risk to his safety. Accordingly, the court

terminated reunification services and set the matter for a hearing on April 6, 2011 to determine whether mother's and father's parental right should be terminated.

These petitions followed.

II. DISCUSSION

A. Mother's Petition

1. Sufficiency of the Evidence

The trial court ruled mother had been provided with reasonable reunification services. Mother now contends that finding is not supported by substantial evidence.

" '[T]he focus of reunification services is to remedy those problems which led to the removal of the children.' [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.) On appeal, we review a juvenile court's finding that an agency provided reasonable reunification services for substantial evidence. (*Ibid.*) In making that determination we must indulge in all legitimate and reasonable inferences to uphold the lower court's decision. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) "If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*Ibid.*)

Applying this standard, we find no error. The record indicates mother was offered a wide array of services to address the specific problems she was facing including parenting classes, psychological treatment, housing assistance, substance abuse evaluation and treatment, and domestic violence prevention treatment. Based on this record, the trial court reasonably could conclude that mother was offered reasonable reunification services.

Mother contends the services were inadequate because they did not help her address the mental health issues she was facing during the early months of the

dependency. The record does not support this claim. The record in fact indicates mother was offered psychological help at all stages of the dependency, including the early months. While the record also indicates mother refused to take advantage of those services, child welfare officials could not force her to do so. (*In re Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.)

Mother also complains that she was not provided any reunification services while she was incarcerated. It is not clear whether this is true, but even if it was, the period in question was at most a few months at the very end of the dependency. Prior to that point, mother had ignored virtually all of the reunification services that had been offered. While child welfare officials might not have been perfect because they failed to offer mother additional services during the brief period that she was incarcerated, reunification services are often imperfect. (*Katie V. v. Superior Court, supra*, 130 Cal.App.4th at p. 598.) However 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 pp. 598-599.) The services provided to mother were reasonable under the circumstances.

2. Whether the Court Understood the Scope of Its Discretion

Mother testified at the December 2010 review hearing and she described the numerous challenges she had faced. Mother said she had been taking care of her mother at the beginning of the dependency. When her mother died, mother went to live with an uncle who tried to help her become "clean and sober." However, the uncle also died which caused mother to become depressed. Sometime thereafter mother was arrested, and while she was in jail, she started taking parenting and addiction classes. The classes were helpful and mother viewed her time in jail as a positive experience.

At that point, the trial judge cut the questioning short with the following comments:

"Let me just say . . . her only problem is time. She was doing everything humanly possible to put this together. And all things being equal, she'll file a motion as she gets closer to release, and that's a whole different issue. [¶] I think the Department did what it

should have and could have. I think she had horrible personal issues that were almost insurmountable, but she survived them. I don't know we need to put her through much more. This is just about timing now."

Based on these comments, mother now argues the lower court erred because it "believed that it did not have the discretion to order additional reunification services . . . ."

We think mother has taken the court's comments out of context. The court was conducting a 12-month review hearing, and at such a hearing, the court's options are limited. A court can continue a case for up to six additional months, but can only do so "if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent . . . and safely maintained in the home within the extended period of time. . . . [I]n order to find a substantial probability that the child will be returned to the physical custody of his or her parent . . . and safely maintained in the home within the extended period of time, the court shall be required to find all of the following: [¶] (A) That the parent . . . has consistently and regularly contacted and visited the child. [¶] (B) That the parent . . . has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent . . . has 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).)

The record here shows mother had recently had been taking parenting and addiction classes while incarcerated and that she was benefiting from those classes. However, the minimal progress mother was making could not, under any reasonable interpretation, be construed to support the findings that would be necessary to extend the dependency. Thus, the court's comments about timing, when read in context, do not indicate that the court misunderstood that it had the discretion to offer additional reunification services. Rather they show an understandable reluctance on the part of the court to make the express findings that would be necessary to continue the dependency

for an additional period of time. We conclude the court did not misunderstand the scope of its discretion.

B. Father's Petition[3]

1. Sufficiency of the Evidence

Father contends the trial court erred when it ruled he would not be allowed to visit with Salvador. According to father, the lack of visits precluded him from reuniting with his son.

Father has not identified precisely what ruling he is challenging. The court ruled father would not be allowed to visit with his son in June 2010 and then reaffirmed that ruling at the December 6, 2010 hearing. In any event, we find no error on this ground.

A court can deny visitation if it would be detrimental to the child, and a finding of detriment will be affirmed on appeal if it is supported by substantial evidence. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580-581.) There was ample evidence to support the court's implied finding here. Father abused mother when Salvador was a baby going so far as to strike her as she held the child. Then at several points during the dependency, father demonstrated he was a dangerous person. He threatened the social workers who were assigned to his case. He was arrested outside the courthouse after a hearing for brandishing a weapon at a social worker. He confronted another social worker while having a bullet over his ear. A psychologist who evaluated father stated that "due to [his] poor impulse control, poor insight into the seriousness of his behavior, as well as his history of perpetrating domestic violence and threatening service providers, he is at a relatively high risk of being a danger to others, especially to a 5 year old with special needs." Plainly, the court's finding of detriment was well supported.

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[3] Respondent Human Services Agency argues father's petition must be dismissed because it is not timely. We disagree. Father was present at the hearing on December 6, 2010; however the trial judge ejected him from the courtroom due to inappropriate behavior. Therefore father was not present when the court ordered that a section 366.26 hearing be held. Accordingly, rule 8.450(e)(4)(A), which sets forth time within which a petition must be filed "[i]f the party was present at the hearing when the court ordered a hearing under . . . section 366.26 . . . ." does not apply.

We conclude the court did not err when it terminated father's visitation rights.

2. Whether the Court Abused Its Discretion

By the December 2010 hearing, Salvador had been living with a foster family for about a year and one half. Salvador was thriving in the placement and the foster family expressed interest in adopting him.

At the December 6, 2010 hearing, father asked the court to place Salvador with his aunt, Ms. B. He presented testimony from Ms. B., who described her earlier attempt to take care of Salvador. That effort was unsuccessful.

After hearing this evidence, the court declined to order Salvador placed with Ms. B, finding the current placement to be adequate.

Father now contends the trial court violated section 361.3 subdivision (a) when it declined to place Salvador with Ms. B. We disagree.

Section 361.3, subdivision (a) states that "preferential consideration shall be given to a request by a relative of the child for placement of the child . . . ." However, by its very terms, that section applies, "[i]n any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361 . . . ." The court here did not remove Salvador from his parent's custody at the December 6, 2010 hearing. That removal occurred well over a year earlier in September 2009 when the dependency was established. That ruling was never challenged and it became final long ago. We conclude the section upon which father relies does not apply.

III. DISPOSITION

The petitions for an extraordinary writ are denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Mother and Father are barred in any subsequent appeal from making further challenges to the order terminating reunification services and setting a hearing under section 366.26. (§ 366.26, subd. (*l*).) Because the section 366.26 hearing is set for April 6, 2011, and in the interests of justice, our decision is final as to this court immediately.

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Jones, P.J.

We concur:

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Simons, J.

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Bruiniers, J.