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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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| L.M.,<br>Petitioner,<br>v.<br>THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO,<br>Respondent;<br>SAN FRANCISCO HUMAN SERVICES AGENCY,<br>Real Party in Interest. | A130813<br>(San Francisco City & County Super. Ct. No. JD10-3078) |

L.M. (Mother) challenges an order of the San Francisco City and County Superior Court, Juvenile Division, made December 27, 2010, in which the juvenile court terminated Mother's reunification services and set a hearing under Welfare and Institutions Code[1] section 366.26 to select a permanent plan for the minor M.W. (born April 2007). Mother objects to the finding that the San Francisco Human Services Agency (Agency) offered or provided her with reasonable services. As discussed below, we conclude substantial evidence supports the finding, and deny Mother's petition for an extraordinary writ on the merits.[2]

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

[2] Section 366.26, subdivision (*l*)(1)(A), bars review on appeal if the aggrieved party has not made a timely writ challenge to an order setting a hearing for selection and

## I. BACKGROUND

On March 15, 2010, the Agency detained the minor, and three days later filed a petition under section 300, subdivisions (b), (c), and (g). The juvenile court formally detained the minor on March 19.

At the conclusion of the continued jurisdictional/dispositional hearing, on June 4, 2010, the juvenile court sustained amended jurisdictional allegations as to Mother under section 300, subdivision (b). Specifically, Mother had been "unable to provide care and supervision of the child at this time due to her mental health condition for which she ha[d] been initially assessed and for which she require[d] treatment and further assessment." Mother had further "displayed anger management problems for which she require[d] assessment and possible treatment." The court ordered reunification services for Mother,[3] adopting a case plan requiring her to complete a parenting education program, to undergo a psychological evaluation and follow any recommendations, to remain under the care of a qualified mental health professional and comply with that professional's recommendations for psychotherapy or medication, or both, and to obtain and maintain suitable housing.

In its report prepared for the six-month status review hearing (six-month hearing), completed November 3, 2010, the assigned caseworker recommended that reunification services be terminated and the matter set for hearing under section 366.26. At the conclusion of the contested six-month hearing, on December 27, the juvenile court adopted these recommendations.

Mother's petition followed. (§ 366.26, subd. (*l*).)

## II. DISCUSSION

If a child is not returned to his or his parent's custody at the six-month review hearing, and that child is under three years of age at the time of his or her initial removal,

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implementation of a permanent plan. The statute also encourages the appellate court to determine all such writ petitions on their merits, as we do here. (§ 366.26, subd. (*l*)(4)(B).)

[3] The court did not offer reunification services to M.W., the biological father.

the court has two options. It "may schedule a hearing pursuant to Section 366.26" if it finds "by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e), 3d par.) On the other hand, it must continue the matter to the 12-month permanency hearing if it finds either there is a "substantial probability that the child . . . may be returned to his or her parent . . . within six months," or "reasonable services have not been provided." (*Ibid*.)

Here the juvenile court found there was not a substantial probability the minor would be returned to Mother within six months, and found by clear and convincing evidence the Department had offered or provided reasonable services to Mother. Finding Mother had not made substantive progress in her court-ordered treatment plan, the court accordingly exercised its discretion to set a hearing under section 366.26.

Mother contends there was no substantial evidence to support the finding that the Department offered or provided her with reasonable services, and thus it was error not to continue her services to a 12-month permanency hearing. Specifically, she urges that she underwent a psychological evaluation as required by her case plan, yet the assigned caseworker was "simply irresponsible" in failing to provide Mother with timely referrals for individual therapy and a medication evaluation as recommended by that evaluation.

In reviewing this finding our sole task is to determine whether substantial evidence demonstrates the Agency made a good faith effort to provide reasonable services. (*In re Monica C.* (1995) 31 Cal.App.4th 296, 306.) This review standard applies even though the trial court was required to utilize the higher standard of clear and convincing evidence. (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75.) In applying it we view the evidence in the light most favorable to the juvenile court's ruling, resolving conflicts and indulging all reasonable inferences in favor of the finding. (See *In re Julie M.* (1999) 69 Cal.App.4th 41, 46.) We do not reweigh the evidence. (*In re Jasmine C.*, at p. 75.)

Services may be deemed reasonable when the case plan has identified the problems leading to the loss of custody, the Agency has offered services designed to remedy those problems, has maintained reasonable contact with the parent, and has made

reasonable efforts to assist the parent in areas in which compliance has proven to be difficult. (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) Here Mother objects only to the services the Agency offered or provided with respect to mental health treatment, and we focus accordingly on the evidence relevant to that issue.

According to the report prepared for the six-month hearing, Mother, as a child, had been a dependent of the juvenile court and later a ward of that court. Less than two weeks before the minor's initial detention, the Agency received a referral after Mother "snapped" when the staff of a homeless shelter requested that Mother leave " 'because of her temper.' " She turned over tables, threw chairs, and spat and tried to spray Lysol in a staff member's face. One staff member reported this was the third time Mother had been "put out of" of a homeless shelter.

The initial detention on March 15, 2010, occurred when police officers transported Mother and the minor to San Francisco General Hospital. Hospital staff gave Mother a mental health assessment, diagnosing her as suffering from depression and posttraumatic stress disorder. The staff gave Mother referrals to outpatient mental health treatment programs, but Mother declined, saying she needed only a housing program that would accept her and her daughter. During her discharge from the hospital on March 16, Mother became verbally aggressive with staff and then combative with security staff, and had to be escorted from the hospital.

At the time the dispositional report was completed, on April 26, 2010, the Agency reported Mother had begun assessment for mental health services at Westside Community Services (Westside) about a week earlier. Around the same time the Agency also referred Mother to Ashbury House—a psychiatric residential treatment program for mothers with children. In the Agency report admitted at the six-month hearing, however, the caseworker assigned after disposition noted Mother had not been accepted into Ashbury House because she denied having mental health issues and said she only needed housing. Mother entered a women's transitional living program instead, but was dismissed from that program on July 6, 2010, after receiving her third "write up" for verbal aggression towards staff. The caseworker further reported that, according to

Mother's therapist at Westside, Mother had participated in only three therapy sessions, and during these she had been "very guarded, noncompliant and paranoid." Westside closed her case after three months because of Mother's refusal to come on a regular basis, engage in therapy, and follow through on a medication referral.

Mother underwent a psychological evaluation by a Dr. Amy Watt after the dispositional hearing. Dr. Watt conducted three interviews in June and early July 2010. Dr. Watt diagnosed Mother as suffering from posttraumatic stress disorder and a personality disorder not otherwise specified. Her evaluation recommended that Mother participate in individual therapy and be referred to a psychiatrist for an evaluation to determine whether medication might help reduce her symptoms and curb impulsive behaviors.

After receiving the evaluation, the assigned caseworker made a referral to Foster Care Mental Health (FCMH) on September 16, 2010. On October 8, FCMH told the caseworker it had assigned Mother to the Tenderloin Adult Clinic for therapy. Mother however, informed the caseworker through her counsel that she did not want services in that neighborhood. At the six-month hearing, the worker testified Mother did not "directly" request another referral. The caseworker met with Mother on October 25, and at that time told Mother she was waiting to hear back from FCMH for another referral to a provider in another location. The caseworker then inquired as to Mother's willingness to follow through with another referral, and Mother responded that she had participated in therapy at Westside and "did not feel that she was in need of additional therapeutic services." Mother further stated that her therapist at Westside had said she "felt they had done the necessary work and [Mother] did not need to continue with the therapy."[4]

In her concluding statement in the report admitted at the six-month hearing, the caseworker noted she would have been more "optimistic" about reunification had Mother been "open to mental health services to work through and explore her history of trauma,

[4] As the caseworker later testified, Mother's characterization of her treatment at Westside, particularly its happy conclusion, "painted a very different picture" from that portrayed by her therapist.

abuse, and abandonment." She recommended termination of services, however, because "the likelihood that [Mother would] engage in mental health services [was] very poor and her chronic untreated mental health issues continue[d] to pose a serious risk to the safety and well being of the minor."

We deem this evidence—viewed in the light most favorable to the court's ruling—to provide substantial evidence of good faith efforts on the part of the Agency to offer or provide Mother with the services she needed to address her mental health issues. Mother, for her part, failed to gain admittance to Ashbury House in April 2010, because she refused to admit to any need for mental health services. In April through June 2010, she failed to follow through with services for therapy and a psychotropic medication evaluation at Westside, while attempting to mislead the caseworker as to her noncompliance with the services offered by that provider.

Mother objects primarily to the Agency's failure to make another referral—after her psychological evaluation—until October 2010, only two months before the scheduled six-month hearing. The caseworker's report, however, permits a reasonable inference that she made the referral to FCMH in a timely manner once she received Dr. Watt's evaluation and recommendations, and there is no evidence to the contrary. Moreover, Mother informed the caseworker on October 25, 2010, in essence, that she did not believe she needed further mental health services. The caseworker herself concluded she would have been more "optimistic" if Mother had been open to participation in mental health services. From this it is reasonable to infer that the caseworker's recommendation to terminate services might have been quite different had Mother only expressed, as late as October 25, more willingness to engage in mental health services.

The issue is not whether the Department could have provided better services in an ideal world, but whether the services were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.) Further, while an agency is obligated to offer appropriate reunification services, it is the primarily the parent's obligation to participate in them. The agency's duty does include "a requirement that a social worker take the parent by the hand and escort him or her" to the services offered or provided. (*In re*

*Michael S.* (1987) 188 Cal.App.3d 1448, 1463, fn. 5.) We conclude substantial evidence supports the juvenile court's finding that the Agency offered or provided Mother with reasonable services, including those offered to address her mental health issues.

## III. DISPOSITION

The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The decision is final in this court immediately. (Cal. Rules of Ct., rules 8.454(a), 8.490(b)(3).)

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Margulies, J.

We concur:

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Marchiano, P.J.

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Dondero, J.