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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

A.G., Petitioner, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Real Party in Interest.	A130940 (Alameda County Super. Ct. Nos. HJ08010940, HJ08010941)
M.C., Petitioner, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Real Party in Interest.	A130942

Father and Mother of A.G. and his younger sister (the children) each petition under California Rules of Court, rule 8.452 to vacate an order of the juvenile court setting

a hearing under Welfare and Institutions Code section 366.26[1] that may result in termination of their parental rights. Father argues the court abused its discretion when it found that return of the children to him would create a substantial risk of detriment to their safety or well-being. Mother challenges the court's finding of a substantial risk of detriment if the children were returned to her, and also contends that no substantial evidence supports the court's finding that she was provided reasonable reunification services. We order the two writ petitions consolidated on our own motion for purposes of disposition. We conclude the court's findings were supported by substantial evidence, and deny the petitions on their merits.

FACTUAL AND PROCEDURAL BACKGROUND

Five-year-old A.G. and his two-year-old sister were removed from their parents' care in September 2008, and petitions were filed alleging they were at a substantial risk of harm as described in section 300, subdivision (b) due to the parents' domestic violence and Mother's threats to injure them. Following a contested jurisdictional and dispositional hearing, the court sustained modified allegations of domestic violence and ordered that reunification services be provided to both parents. The parents' case plans included domestic violence and parental skills education programs, psychological evaluations, psychotropic medication evaluations and monitoring, and individual counseling therapy. Each parent was to have separate supervised weekly visits. At the six-month review hearing, the court found that the Alameda County Social Services Agency (Agency) had provided reasonable services and ordered that services be continued.

The Agency reports prepared for the 12-month and 18-month review hearings recommended that reunification services be terminated for both parents. A hearing on the 12-month and 18-month review began on January 29, 2010, and concluded after numerous sessions on December 29, 2010. The evidence included the testimony of the social worker, reports and updates prepared by the Agency, letters from the children's

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

and parents' therapists and clinicians who supervised the parents' visitation, and psychological evaluations of both parents. At the time the hearings concluded, A.G. was placed at the Lincoln Child Center, and his younger sister was in a licensed fost-adopt home that was also open to the possibility of adopting A.G.

At the conclusion of the hearing, the court observed the case was "highly unusual in that the Court has had the opportunity to observe the parents for 11 months." The court found Mother had not "learned or changed from where she was at the beginning" of the case more than two years earlier, and she "consistently displayed impulse control issues and . . . exhibited bizarre behavior in this courtroom." Despite domestic violence counseling, Mother was arrested in March 2010, for an assault on Father's girlfriend, pled guilty to a lesser charge, and was on three years of probation. Mother was also placed on a psychiatric hold and briefly hospitalized. The court directed that "the record should reflect that [Mother was] snarling at [the judge]" when she announced her ruling. The court determined that Mother failed to follow through with her therapy which was "the real key component in [Mother's] case plan." The court also found Mother lacked insight into her condition, was "easily agitated [and] erratic," "was unable to answer questions directly," and was "consistently . . . unable to control herself in the courtroom." The court concluded that although Mother may have substantially complied with certain parts of her case plan, she did not demonstrate that she learned anything different from the start of the case to the end.

The court found that Father had stable housing and employment, and benefitted from the support of his mother and brother, but that he failed to make substantial progress in his case plan. Although A.G. was suffering the effects of post traumatic stress disorder from witnessing his parents' violent fights, Father persisted in "trying to prove to the Court that there was no domestic violence in the home." He had videotaped A.G. while questioning him about domestic violence during a recent visit. The court was troubled by Father "using his visits, which should have been opportunities to bond with the children, . . . trying . . . to prove to the Court that he didn't hit [Mother]." The court found Father "failed to comply with the requirement of the case plan that he meaningfully engage in

therapy," noting that he had been "referred to nine different therapists," and "did not believe he had any therapeutic issues to work on." Father continued to "play with words" about his domestic violence arrests, and failed to appreciate that his children continued to suffer due to their exposure to domestic violence.

Neither parent "participated regularly and made substantive progress in court-ordered treatment programs, made substantial progress in complying with the case plan [or] alleviated or mitigated the causes necessitating out-of-home placement." The court found reasonable services were provided to both parents, and return of the children would create a substantial risk of detriment to their safety, protection, or physical or emotional well-being. The court terminated reunification services to both parents and scheduled a hearing under section 366.26. Father and Mother filed these writ petitions seeking review of the court's orders.

DISCUSSION

A. Mother's Writ Petition

1. *Reunification Services*

We review the court's determination that parents were provided reasonable reunification services for substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010.) We "accept the evidence most favorable to the order as true and discard the unfavorable evidence as not having sufficient verity to be accepted by the trier of fact." (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.) "We must indulge in all legitimate and reasonable inferences to uphold the [order]." (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.) "[T]he record should show that the supervising agency identified the problems leading to the loss of custody, offered services designed to remedy those problems, maintained *reasonable* contact with the parents during the course of the service plan, and made *reasonable* efforts to assist the parents in areas where compliance proved difficult (such as helping to provide transportation . . . ." (*In re Riva M.* (1991) 235 Cal.App.3d 403, 414.) "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." (*In re Misako R.*, *supra*, at p. 547.)

Mother does not address or dispute the evidence that supports the court's finding that reasonable services were provided. Instead, she challenges two aspects of those services. Mother first argues the Agency "should have taken steps to avoid [her and Father's] back to back visits [with the children] which led to problems." But the social worker's testimony shows that due to the distance the children had to travel to the visits, they were not able to accommodate Mother's request to visit on a different day from Father. The record also shows the Agency took reasonable precautions to protect Mother from interacting with Father during the transitions between their separate visits with the children. Mother's other challenge to services is a complaint that the Agency declined her repeated requests for "counseling with [Father] to try to work out their problems together." Again, the social worker's testimony explained that such counseling is not appropriate in a domestic violence case when the parents have not made sufficient progress in individual therapy, and each parent's therapists thought it would be a bad idea in this case. Mother summarily states that the Agency failed to provide her with regular and meaningful visits, but provides no further argument on the point, and we therefore deem it waived. (See *Nelson v. Avondale Homeowners Assn.* (2009) 172 Cal.App.4th 857, 862; *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830.)

The record shows Mother received services designed to address the issues that led to the children's removal, including individual therapy, domestic violence classes, psychological and medication evaluation and monitoring, and supervised visitation. The juvenile court's conclusion that reasonable services were provided is supported by substantial evidence.

2. *Finding of Detriment*

Section 366.22 provides in part that following an 18-month permanency review hearing, "[t]he court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. . . . The

failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental." (§ 366.22, subd. (a); see also § 366.21, subd. (f) [applying same standard of proof in 12-month review hearing].) We determine whether substantial evidence supports the juvenile court's findings and do not "reweigh conflicting evidence" on appeal. (*Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

Mother very selectively cites the record to support her claim that "the court should have found that there was no detriment to returning the children to [her]." She contends the Agency "demonized" her by "describing [her] visits as volatile and detrimental, even when described as loving and nurturing by third party therapists." Mother does not cite to the record to support her statement that therapists considered her to be nurturing and loving. But the clinician Mother is apparently referring to supervised visits with the children for approximately three months beginning in April 2009. In her testimony, this clinician acknowledged that she was terminated from her employment after she allowed the parents to have a joint visit despite the Agency's direction that joint visits would not be appropriate. She had not seen the family since her termination. The clinician was also later removed from working with the children's older half-sister because she was thought to be "enmeshed," or "too involved," with the family.

Mother relies on her own testimony to point out that she separated from Father when she was released from jail following the assault on Father's girlfriend, that she had stable housing and employment, was continuing her anger management and domestic violence classes, was requesting further therapy services, and could emotionally and physically support the children. But Mother does not address the evidence that supports the court's finding that the children were at a substantial risk of detriment should they be returned to her, nor does she discuss the applicable standard of review. "Evidence not favorable to the petitioner cannot be simply ignored as if it does not exist." (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.)

The record shows Mother was terminated from therapy in January 2010, due to numerous cancelled and missed appointments, and her therapist was unable to report on

Mother's progress because she had attended only four weekly sessions in the three months before termination. Mother apparently did not follow up on the social worker's referrals to other therapists until June 2010, when she began treatment with a new therapist who met with her five times over the next two months. The new therapist had worked with Mother in an earlier dependency involving her older daughter, and reported that Mother exhibited little capacity for self-reflection and admitted she needed help with "flying off the handle." The therapist told the social worker that Mother's therapy would take "a very long time." A few weeks later, Mother sought another therapist, and after trying to get Mother to talk through her differences with her current therapist, the social worker provided a referral.

Mother was sometimes late or missed her visits with the children. During visits she could become "unpredictable and disruptive and sometimes explosive . . . ." In an October 2010 visit, a therapist could not calm Mother and she became angry, was yelling, and scared the children. Mother also "became very agitated, raising her voice, swearing, and using racial epithets" during a meeting that same month convened to review visitation rules with Agency staff. Mother described her daughter as "infected" following a visit with paternal relatives, and said she did not want to see her daughter "[that day] or ever again."

The social worker testified Mother was not able to meet the children's needs, and was unable to control her anger. The social worker was concerned that if the children were returned to her care, Mother would allow the children to be placed in dangerous situations and would not protect them from exposure to domestic violence. The court's finding of a substantial risk of detriment if the children were returned to Mother is supported by substantial evidence.

B. Father's Writ Petition

Father contends the court's determination that returning the children to him would create a substantial risk of detriment was an abuse of discretion because he completed his case plan and court-ordered treatment. But even though Father completed certain court-ordered anger management, domestic violence, and parenting classes, he failed to

meaningfully participate in individual therapy and in visitation, and the court determined he failed to alleviate the causes that led to his children's removal. The findings are supported by substantial evidence. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143 [compliance with specific requirements of reunification plan is not determinative and "[t]he court must also consider the parents' progress and their capacity to meet the objectives of the plan; otherwise the reasons for removing the children out-of-home will not have been ameliorated."].)

Father's case plan required him to attend counseling therapy each week. But despite referrals to several therapists, Father attended only 11 therapy sessions. Following his April 2009 psychological evaluation, Father was referred to Dr. Charles Flinton in July 2009, but did not meet with Dr. Flinton until more than three months later. Father attended nine sessions with Dr. Flinton over four months, and later told his social worker "he decided to take a 'break' " from therapy because he disagreed with a progress update that Dr. Flinton provided to the social worker. Dr. Flinton's letter reported Father "rejects any notion that he has played a role in the conflict with [Mother]," and he "presents as a mistrustful, anxious, intense, and emotionally aggressive man with poor problem solving skills[,] . . . poor communication skills, low empathy, and strong propensity to project blame onto others." Father "show[ed] little insight and . . . demonstrate[d] scant accountability for the strife that the family has endured." Dr. Flinton concluded, "Without accountability, and a desire for self-improvement, this will be a long process."

Several months later when Father decided he was ready to return to therapy, Dr. Flinton's schedule was full, and Father was referred to several other therapists. During July and August 2010, Father attended two sessions with therapist Jimmy Jun, who reported Father was "very resistant and defensive" when discussing his responsibility for his family's situation. Father "blamed his ex-wife and social workers," and "said he doesn't need to improve or correct anything about himself to be a suitable father." Jun told the social worker that despite Father's professed willingness to talk, Jun was very pessimistic about the potential effectiveness of therapy because Father did not

acknowledge that he had a problem he needed to address. While Father contends Jun believed he was only authorized to see Father for two sessions, the social worker told Jun weekly therapy was authorized, and Father promised to contact Jun to make such arrangements. Jun later advised the social worker he could not accommodate Father's need for long-term therapy after Father left Jun a voicemail message threatening to sue him in retaliation for Jun's previous report.

Father points to the social worker's testimony at the January 29, 2010, hearing to argue that there were no services he failed to complete, but the hearing occurred before Father told the social worker he was taking a break from his therapy with Dr. Flinton. Father also contends that "many of his actions during this case were misinterpreted by the social worker," but such matters of witness credibility are for the juvenile court to determine, not us. (See *In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.) Father says he was uncomfortable working with the social worker because in April 2009, the social worker got a restraining order based on threatening voicemail messages that Father left for the social worker and his supervisor. Father now contends the court should have removed the social worker from the case, but he does not claim that he requested and was denied such relief. He also acknowledges that the court directed that thereafter his visits were to be supervised by an outside agency, rather than the social worker. Father also contests the court's observation that the social worker referred him to nine different therapists, but the record confirms that the social worker so testified, and Father does not address his failure to make effective use of therapeutic services.

The social worker testified that even after completing the classes required by his case plan, Father continued to deny any responsibility for domestic violence and still blamed Mother for the problems in their relationship. Father did not think he had a problem, and did not understand the impact domestic violence had on the children or their emotional needs. Despite being told that he was acting inappropriately, Father continued to interview and videotape the children during visits and denied their reports of domestic violence. In light of the evidence of Father's inappropriate conduct during visits, we need not address Father's claim that his missed visits were caused by factors

beyond his control. The court's findings that Father failed to make significant progress toward alleviating the problems that led to the removal of the children from him, and that return to his custody would create a substantial risk to the children, are supported by substantial evidence.

DISPOSITION

The orders to show cause are discharged, and the petitions for extraordinary writ are denied on the merits. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.452; *In re Julie S.* (1996) 48 Cal.App.4th 988, 990-991.) The stay requests are denied as moot. Our decision is final immediately. (Rule 8.490(b)(3).)

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Siggins, J.

We concur:

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McGuiness, P.J.

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Jenkins, J.