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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re I. A., a Person Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. K. B., Defendant and Appellant.	C061130 (Super. Ct. No. JD227454)

Appellant K. B., the mother of the minor I. A. (born September 2005), appeals from an order of the juvenile court terminating her parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)[1] She contends that she may appeal the juvenile

[1] Hereafter, undesignated statutory references are to the Welfare and Institutions Code.

court's denial of reunification services, and the denial of services was an abuse of discretion. We shall affirm.

BACKGROUND

Appellant's Child Welfare History

Appellant has an extensive child welfare history; her paternal rights were terminated regarding two other children in 2001 and 2002. She had also received services for E. M. in 2006 and 2007. In May 2001, she gave birth to a girl, K. H., who tested positive for cocaine and amphetamines. The Department of Health and Human Services (DHHS) filed dependency petitions on behalf of E. M. and K. H. due to appellant's substance abuse problem. Appellant could not be located, so services were not offered at the jurisdiction and disposition hearing. Appellant had not come forward at the time of the section 366.26 hearing, and parental rights to K. H. were terminated in February 2002. The juvenile court found E. M.'s behavioral problems made adoption inappropriate, and placed her with the maternal grandparents.

In March 2002, DHHS filed a dependency petition on behalf of appellant's son, K. H., after he tested positive for cocaine at birth. The juvenile court sustained the petition and ordered no services for appellant based on appellant's previous failure to reunify. Parental rights were terminated for the son, K. H. in August 2002.

In April 2006, the juvenile court granted appellant's section 388 petition for modification and ordered six months of reunification services with E. M. E. M. was placed with

appellant at a September 2006 section 366.3 postpermanency review hearing subject to her compliance with the case service plan. In September 2007, appellant was ordered to participate in twice-monthly drug testing and counseling.

Present Case

In April 2008, appellant was detained by a Roseville police officer for failing to stop at a stop sign. The officer noticed appellant's speech was both rapid and slurred, she was fidgety, and seemingly unable to stand still. The officer tried to administer a series of field sobriety tests, and arrested appellant for driving under the influence of her medication. Her blood sample tested positive for methamphetamine.

Appellant told the officer she was on her way to have sex with a man she had met online. A social worker for DHHS searched the internet and found an escort advertisement for appellant, which stated she was available for sex acts 24 hours a day. The ad indicated a preference for in-home services, but expressed appellant's willingness to travel for the right customers.

Appellant told the officer that I. A. and his half brother K. T. (born November 1997) were home alone, but a neighbor was checking in on them every half hour. According to the neighbor, appellant had called her at 5:30 a.m., saying she was going to Roseville and the children would be left alone from 5:30 a.m. to 8:20 a.m. The neighbor reported checking in on the children at 6:30 a.m. and 7:30 a.m. I. A. was left alone from 7:30 a.m. to 8:20 a.m. after K. T. left for school.

In May 2008, DHHS filed a dependency petition alleging jurisdiction under section 300, subdivision (b) (failure to protect). The minor, his half sister E. M. (born July 1993), and K. T. were detained.[2]

In April 2008, appellant's therapist reported appellant had slurred her words and presented as childish during an appointment. She appeared to be regressing, and told the therapist she may need to put her children in foster care.

Appellant is diagnosed with bipolar disorder, posttraumatic stress disorder, dissociative identity disorder, and attention deficit disorder. She takes four psychotropic medications: Topomax, Wellbutrin, Adderall, and Amantadine. Adderall is an amphetamine, but does not break down into methamphetamine. Appellant was repeatedly tested for drugs between May and July 2008. She tested positive for methamphetamine twice in May 2008, and only sporadically tested positive for amphetamine. If appellant regularly used her Adderall, she would have consistently tested positive for amphetamine.

Appellant told the social worker she tested positive for methamphetamine because she had helped a friend move out of a house where others may have been smoking the drug. She also denied using drugs before she was pulled over, claiming she has nervous twitches and body movements which make her appear to be

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[2] Appellant does not challenge the juvenile court's orders as to K. T. and E. M.

high. Appellant admitted to selling herself for money because she was strapped for funds and did not know what else to do.

At the combined jurisdiction and disposition hearing in September 2008, when asked to explain testing positive for methamphetamine, appellant denied ingesting the drugs and replied: "If I was dirty for it, then I was dirty for it." She admitted to a long-term drug problem and continuing to use drugs after attending three different substance abuse programs. Appellant claimed she was no longer using drugs, and her current efforts would be successful because she is addressing her mental health problems for the first time. She did not always use her Adderall consistently because she would not always obtain the written order needed to fill the prescription. Appellant also said she was pregnant at the time of the hearing, and therefore no longer taking her medication.

Appellant admitted to having been a prostitute, but denied going to see a client when she was stopped by the Roseville police. She also denied leaving her children alone, claiming she left them with babysitters.

The juvenile court sustained the petition and continued placement of the minor. Reunification services were denied pursuant to section 361.5, subdivision (b)(10), (11), and (13) and the court set a selection and implementation hearing (§ 366.26).

Appellant was not present at the section 366.26 hearing in February 2009, and the juvenile court terminated her parental rights.

DISCUSSION

I.

Admitting she never filed a timely writ petition, appellant argues she is not subject to the procedural bar because the juvenile court did not orally advise her of the writ requirement. We agree.

When a juvenile court orders a hearing pursuant to section 366.26, it is obligated to advise the parties of the requirement to file a petition for an extraordinary writ to preserve the right to appellate review of that order. (§ 366.26, subd. (ℓ)(3)(A); Cal. Rules of Court, rule 5.600(b).)[3] If a party is present at the hearing at which the section 366.26 hearing is set, the court shall orally advise the party; if the party is not present, the writ advisement must be mailed by first class mail to that person's last known address. (§ 366.26, subd. (ℓ)(3)(A).) When a proper advisement has been provided and a party fails to file a timely writ petition, that party is precluded from review by appeal of the findings and orders made at the hearing setting the section 366.26 hearing. (§ 366.26, subd. (ℓ)(2).) When the juvenile court fails to provide the required writ advisement, claims stemming from the hearing at which the section 366.26 hearing is set may be raised on appeal. (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 450.)

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[3] Hereafter, references to rules are to the California Rules of Court.

Appellant was present when the juvenile court set the section 366.26 hearing. After denying reunification services and setting the section 366.26 hearing, the juvenile court asked: "Will counsel waive a full reading of the writ advisement?" Appellant's counsel and counsel for the father both assented. The minutes and reporter's transcript show the juvenile court directed the clerk to present notice of the writ requirement to the parents while they were in the courtroom, and the clerk complied with the juvenile court's directive.

In order to secure expeditious writ review of challenges to an order setting a section 366.26, numerous, mandatory time limits are placed on the proceedings. (*Karl S. v. Superior Court* (1995) 34 Cal.App.4th 1397, 1402-1403; rule 5.600.) "[A]mong these limits is a seven-day period from 'the date of the order setting' the section 366.26 hearing within which the parent must file the notice of intent and request for record with the clerk of the juvenile court, extended by an additional five days if the only notice of the order was given to the parent by mail." (*In re Cathina W.* (1998) 68 Cal.App.4th 716, 721 (*Cathina W.*); rule 5.600(c).) Relief from these limits can only be established by a showing of good cause. (*Cathina W.*, *supra*, at p. 721.)

"The 'burden is on the *parent* in a juvenile dependency case to pursue his or her appellate rights[; i]t is not the *attorney's* burden.' [Citations.]" (*Cathina W., supra*, 68 Cal.App.4th at pp. 723-724.) Section 366.26, subdivision (ℓ) and rule 5.600 place heavy burdens on a parent. Effective notice is

essential to fair and efficient operation of the legislative scheme. Here, the juvenile court's procedure ignored the legislative command to orally notice appellant of the writ procedure thereby depriving appellant of the mandated oral advisement.

The statutory command is clear; if the parent is in court when the 366.26 hearing is set, the "notice *shall be made orally* to a party if the party is present at the time of the making of the order[.]" (§ 366.26, subd. (ℓ)(3)(A), italics added.) We do not believe the Legislature intended for counsel to be able to waive this requirement intended to benefit the parent.

We find this conclusion illustrated by *Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th 254. In *Jennifer T.*, the minute order contained a recital that "'[t]he parties are advised of writ procedures in open court,'" but "the reporter's transcript establishes the juvenile court failed to orally advise mother of her writ rights." (*Id.* at p. 259.) Instead, "the transcript of the hearing indicates the court merely 'direct[ed] the clerk to give copies of the writ notices to the mother.'" (*Ibid.*) The Court of Appeal presumed the reporter's transcript was more accurate and concluded the parent had not been notified. (*Id.* at pp. 259-260.)

Implicit in the Court of Appeal's decision was the conclusion that written advisement will not substitute for oral advisement when the parent is in court when the section 366.26 hearing is set. We agree, and conclude *Jennifer T.* governs the instant case. Since counsel cannot waive oral advisement of the

writ requirement, and the juvenile court did not follow the explicit legislative command to orally advise appellant, she has established good cause to raise her claims on appeal.

II.

Appellant contends the juvenile court erred in denying reunification services. She is mistaken.

Section 361.5, subdivision (b), allows the juvenile court to deny reunification services if it finds by clear and convincing evidence that one of several enumerated conditions exists.

Section 361.5, subdivision (b)(10), provides services may be denied when "the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent," and subdivision (b)(11) applies when "the parental rights of a parent over any sibling or half sibling of the child had been permanently severed[.]" Neither provision applies if the parent has made "a reasonable effort to treat the problems that led to removal of the sibling or half sibling." (§ 361.5, subd. (b)(10), (11).)

"A court reviews an order denying reunification services under section 361.5, subdivision (b) for substantial evidence. [Citation.]" (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 96, fn. omitted.)

Appellant does not contest that her past failure to reunify and loss of parental rights satisfies the first requirement of

subdivision (b)(10) and (11). Instead, she argues the juvenile court erred in denying her services because she had made reasonable efforts to treat the problems which led to the removal of her children in the past. She further claims the juvenile court applied an incorrect standard, and she had made reasonable efforts in spite of her recent relapse.

"[T]he 'reasonable effort to treat' standard . . . is not synonymous with 'cure.'" (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.) This provision allows a "parent who has worked toward correcting his or her problems an opportunity to have that fact taken into consideration in subsequent proceedings[.]" (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 843.) In other words, if "'there is a reasonable basis to conclude that the relationship with the current child could be saved, the courts should always attempt to do so.'" (*Id.* at p. 842.) To be considered reasonable, the parent's efforts must be more than "lackadaisical or half-hearted." (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 99.)

Appellant has an admitted history of drug abuse which caused her to lose parental rights to her daughter K. H. in February 2002 and her son K. H. in August 2002. She had been in three different drug treatment programs before the current dependency action, but failed to address her drug problem in the six years between the loss of parental rights for her first child and the minor's detention in February 2008.

At the disposition hearing, appellant invoked her numerous mental health issues as an explanation for her previous failure

to address her drug dependency. She claimed that her current treatment plan, which addressed her mental health problems for the first time, would succeed where other treatments had failed. However she had not been consistently taking Adderall, one of her psychotropic medications, and her pregnancy kept her from taking any of her medications by the time of the disposition hearing.

Appellant twice tested positive for methamphetamine while the dependency action was pending. While appellant admitted to having abused drugs in the past, she did not take responsibility for her current drug use. The juvenile court found her denials not credible, and nothing in the record contradicts the court's finding. Her sporadic use of Adderall was consistent with her hoarding the drug in order to take larger doses and get high. For example, she admitted taking two doses of Adderall close together before her arrest, and having done so before.

Although appellant made recent efforts to address her drug and mental health problems, the juvenile court could conclude her efforts were too little, too late. (See *Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 601.) Appellant's continued drug use after the dependency was initiated, her history of drug use and failed rehabilitation, and her failure to take responsibility for her recent use provide substantial evidence supporting the court's finding that she had not made reasonable efforts to address her drug problems that led to removal of her other children.

We also reject appellant's contention that the juvenile court's acknowledgement that appellant had made progress from the time E. M. was removed shows the court applied an improper standard. The statement was made after the juvenile court ruled appellant had not made reasonable efforts, and addressed whether services were in the minor's best interests. While appellant had made progress, it was from a time when "she was homeless, her whereabouts were unknown, and her life certainly was in much greater chaos." Just after acknowledging her progress, the juvenile court noted appellant still cannot cope once children, her mental health issues, and her drug problems are added to her life. The juvenile court's commendable effort to encourage appellant neither admits reasonable efforts were made nor applies the wrong standard.

In denying services, the juvenile court stated: "So I think reasonable attempts at ameliorating the underlying issues goes beyond simply appearing at services. It implies some level of a learning process in utilizing the skills that one is receiving by attendance at the various services." This is a correct statement of the law (see *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 73 [reasonable effort implies more than simply going through the motions]), and the juvenile court applied the correct legal standard when denying services.[4]

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[4] Appellant also contends section 361.5, subdivision (b)(13), did not apply to her. Because the juvenile court properly denied services under subdivision (b)(10) and (b)(11) of section 361.5, it is unnecessary to consider whether services could also

DISPOSITION

The juvenile court's orders terminating parental rights are affirmed.

CANTIL-SAKAUYE, J.

We concur:

SIMS, Acting P. J.

RAYE, J.

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be denied under subdivision (b)(13). (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76.)