Filed 5/19/15 In re Angel M. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In the Matter of Angel M., et al., Persons Coming Under the Juvenile Court Law. _____ PAMELA F., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B261852 (Los Angeles County Super. Ct. No. CK67032)

ORIGINAL PROCEEDING. Petition for extraordinary writ. (Cal. Rules of Court, rule 8.452.) Tony L. Richardson, Judge. Petition denied.

Los Angeles Dependency Lawyers, Inc., Law Office of Marlene Furth, Melissa A. Chaitin, Lakeshia M. Dorsey and Mercedes Akounou, for Petitioner.

No appearance for Respondent.

Office of County Counsel, Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel, and Jeannette Cauble, Deputy County Counsel, for Real Party in Interest.

Pamela F. (mother) has filed a petition for extraordinary writ (Cal. Rules of Court, rule 8.452) challenging an order of the juvenile court terminating reunification services with two of her children, Angel and I.M., and setting a hearing pursuant to Welfare and Institutions Code section 366.26.[1] We deny the petition.

FACTS AND PROCEDURAL HISTORY

Mother, now in her early 30's, began using drugs when she was 17 years old and in high school. Her drug of choice is methamphetamine. Mother denies using drugs continuously; she was "clean in 2001," started using methamphetamine again in 2005 when her brother died, was clean again from 2005 to 2013, and began using again in 2013 because of "stress at home."

Mother is the single mother of five children. The subjects of this dependency proceeding are the two oldest children, Angel (now age 14) and I. (now age 12). Two younger children, Freddie and L., were removed from mother's custody after L. tested positive for methamphetamine at birth in June 2013. Freddie and L. are the subjects of a separate dependency proceeding and have not been returned to mother's custody.[2]

In September 2014, mother gave birth to Eva, who is also the subject of a separate dependency proceeding. The Los Angeles County Department of Children and Family Services (DCFS) detained Eva, but the juvenile court released her to mother at the detention hearing. At the time the juvenile court made the order challenged in this proceeding, Eva was living with mother at John Wesley Community Health (JWCH) Institute, a residential drug treatment program.

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

[2] Freddie's case was closed with a family law order in which Freddie's father took custody of him. Mother made no effort to reunify with L. and agreed L. could be adopted by mother's brother.

When the allegations relating to Freddie and L. first arose in June 2013, DCFS allowed Angel and I. to remain with the maternal grandmother on the understanding she would file for legal guardianship. In September 2013, while mother was enrolled in a residential drug treatment program, the maternal grandmother had a mental breakdown and abandoned the children. Angel was left with the maternal grandfather, who could not care for him. A maternal cousin, Sophia L., who was already caring for I., took Angel into her home.[3]

On September 25, 2013, DCFS filed a section 300 petition on behalf of Angel and I., alleging the children were at risk because mother's substance abuse rendered her incapable of caring for them. The petition also included an allegation that the children's siblings were currently dependents of the juvenile court due to mother's substance abuse. DCFS amended the petition on October 30, 2013, to allege that Angel and I. had been exposed to violent altercations between mother and the father of Freddie and L. Mother pled no contest to the amended petition on November 6, 2013. She agreed to a court-ordered case plan which provided, among other things, that mother receive a "[f]ull drug/alcohol program with aftercare," parenting classes, and counseling to address case issues, including her "domestic violence [history]." Mother was required to undergo weekly random or on demand drug tests. She was allowed weekly monitored visitation with the children for three hours, three times per week, in a neutral setting with a DCFS-approved monitor.

Six-month review hearing

DCFS prepared a status report in anticipation of the six-month review hearing on May 7, 2014.

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[3] On September 7, 2013, mother signed and had notarized a document giving temporary guardianship of Angel and I. to Sophia L. and her boyfriend (now husband), Samuel H.

Drug programs

At the time of the six-month hearing, mother, who was 16 weeks pregnant, was continuing to "struggle with her sobriety," and had been observed by friends and relatives to be under the influence.

On July 30, 2013, two months before DCFS detained Angel and I., mother had enrolled in Options for Recovery, an intensive, one-year structured outpatient program for "chemically dependent women who are pregnant and/or parenting." Mother resided at the Victory Outreach Women's Recovery Home, which was within walking distance of the program. For the first month, mother attended the program for 28 out of 31 available days, and tested negative for drugs. In September of 2013, however, mother's counselor at the program reported that mother had been "challenged . . . with the displacement of her older children and had become unstable with her living circumstances as well as her attendance here at the program." Although mother "actively sought support while here," she "eventually had a series of no call/no show absences, which led to her discharge from the program" on September 16, 2013. Mother was encouraged to return to the program and reminded she was doing very well. Although she was offered additional housing through the outpatient substance program, mother said she would be living with family members. Mother stopped communicating with the program and did not leave a contact phone number.

On October 28, 2013, mother asked to be referred to Behavioral Health Services, an outpatient treatment program in Torrance. Mother was provided with a schedule of program activities she had to attend in order to be in compliance with treatment program requirements. On February 11, 2014, a program counselor reported that mother's attendance had been "irregular despite being encouraged to comply with regular attendance." In the approximately four months she had been enrolled in the program, mother had attended eight group counseling sessions and three individual counseling sessions. She had not attended any self-help meetings. Mother had two negative drug tests.

On February 21, 2014, DCFS social worker Lilia Garcia-Mora discussed with mother her limited progress in the treatment program. Mother said she was "already aware." Mother "became defensive and provided multiple excuses such as having to wake up early, commuting on the bus, or sometimes not being interested in attending her treatment program and [wanting] to stay home."

On April 15, 2014, mother called L.'s caretaker late at night, crying and asking for help. The caregiver and her husband picked up mother, who was unkempt, dirty, and appeared to be under the influence. The couple took mother to their home, and then to the home of the caregiver's mother to spend the night. They then arranged for her to spend a month with another friend, but mother stayed only 10 days. When the social worker confronted mother about this incident, and suggested that mother go into an inpatient drug program, mother continued to deny having a substance abuse problem, and "blam[ed] everyone."

On April 17, 2014, mother's counselor at the program reported that mother's attendance had been "irregular," but she addressed the issue with mother and her attendance improved. However, mother had tested positive for drugs and had not been attending self-help meetings.

Visitation

During the months of November and December 2013, mother was having weekly monitored visits with Angel and I. However, DCFS modified the visits when mother tested positive for methamphetamine in late December 2013, and beginning in January 2014, visits were held at the DCFS office in Santa Fe Springs each Wednesday, Thursday and Friday for one and one-half hours per visit. In mid-January, mother requested that the visits at the DCFS office be limited to Wednesdays and Fridays, because on Thursdays she would visit the children at Sophia L.'s home or at their local church. During the visits, at which Freddie was also present, mother "engaged with her children in simple dialogue," and asked about their school day and well-being in their placement. However, mother often arrived at the visits unprepared. She had been encouraged to

bring coloring books, games or puzzles to entertain the children, but she relied on the children to bring these items. Mother was able to redirect her children when needed.

The children were also receiving weekly in-home counseling. Their counselor reported that Angel would like to visit with mother and eventually return to his mother's care, but I. said she did not want to return to her mother, nor did she want conjoint counseling. During a visit I. claimed that mother hit her, and she was afraid of being hit if she returned to mother's care. I. wanted to remain with Sophia L.

On February 28, 2014, I. refused to continue visiting her family. I. stated that mother had "never really cared for her" and had physically abused her in the past. I. said she would not feel safe if returned to mother's care.

Mother believed that Sophia L. was trying to keep the children away from her and her family. In early March 2014, the DCFS monitor reported that during a visit between mother and I., Angel, Freddie and L., mother and the maternal grandmother made verbal threats to Sophia L., and law enforcement had to be called.

DCFS recommended that the children remain dependents of the court, and that the family continue to receive reunification services. Although family reunification remained as the goal for mother and her children, mother had made "limited progress towards her recovery" and her required random drug testing had been inconsistent. Mother was 16 weeks pregnant and the social worker emphasized that "help is available and maintaining sobriety is very important not only for her own self, but for her unborn child, and to care for her children." Family members and the social worker had encouraged mother to enter an inpatient substance abuse program, but mother "denies she has problems with substance abuse."

On May 7, 2014, the juvenile court held the six-month review hearing. Mother did not appear. The court ordered further reunification services and the matter was continued for a 12-month status review hearing.

Twelve-month hearing

In a report prepared for the 12-month review hearing on November 7, 2014, DCFS stated that during the current period of supervision, mother had given birth to Eva on

September 5, 2014. Mother enrolled at the Tarzana Treatment Center in Long Beach, but was terminated because she failed to comply with the program rules and regulations. On September 22, 2014, mother enrolled in the JWCH Institute in Los Angeles, a residential drug treatment program. Based on the fact that mother had yet to complete any drug treatment program, DCFS was of the opinion that mother had not made significant progress in her court-ordered treatment plan.

DCFS reported that the children were doing well in the home of Sophia L. and "now identify Ms. [L.] as their 'mom.'" Mother's visits with the children were sporadic, for a number of reasons. Mother visited primarily with Angel, because I. did not want to visit her. I. claimed that when she lived with mother, mother hit her and pulled her hair, and she would not feel safe if returned to mother's care. I. had last visited with mother in March 2014, eight months before the DCFS report was prepared. Angel had more visits with mother, but there were times he did not want to visit her. Mother had failed to show up for several visits in March and April 2014. When mother enrolled in an inpatient program in May 2014, she was not allowed to have visitors for the first 30 days of treatment. Mother resumed monitored visits with Angel during July and August 2014, initially monitored at Tarzana. Again, visits were inconsistent, either because Angel sometimes refused to visit, or mother was not available for the visit but failed to call the caregiver. In late October 2014, both Angel and I. told DCFS they were no longer interested in visiting with mother.

DCFS recommended that the court continue to provide family reunification services, even though Angel and I. were not interested in reunifying with mother.

On November 10, 2014, mother's counsel asked to set the 12-month review hearing for a contest. The court granted the request and continued the hearing to January 26, 2015. The court ordered DCFS to prepare a supplemental report "to include any progress, participation and any change in recommendation."

In its January 26, 2015 interim report, DCFS stated mother remained in treatment at the JWCH Institute, a six-month residential drug treatment program. Mother's counselor anticipated that mother would complete the program on March 24, 2015.

The interim report was focused primarily on the children. Both Angel and I. continued to refuse to visit with mother. I. had refused visits beginning in March 2014 and Angel had refused visits beginning in September 2014. Both also refused conjoint counseling. Mother claimed that the children were being influenced or discouraged by their caregiver, Sophia L. She said the children "never really had a stable home and this is the only reason they want to be with [Sophia L.]." However, both children denied that anyone was trying to discourage them from visiting with mother. In fact, I. stated that "if anything, my Nina (Sophia) is always encouraging. They always ask me, 'Do you want to talk with her?' and I say no." I. continued: "I like it here. They love me. . . . I feel part of this family. I would like to be adopted by them. I like my environment. They look after my best interest. I don't want to live or return to [mother]. When I lived with her, I had a 1.05 GPA. I now have a 3.0 GPA. My grades have improved." In a letter dated January 23, 2015, I. expressed her wish to remain in her current home: "Reasons are because I am loved every second of the day. . . . I get to eat [three] times a day. My mom [Sophia L.] keeps up with all my work by checking. She talks to my teachers often. I love and trust the people that I live with . . . . I have never felt this much love before. . . . When I was living with Pamela [F.] she used to make me feel like I was born into the wrong family. . . . I understand that Pamela [F.] is my mother. Well in my eyes, Sophia [L.] will always be my mother."

Angel expressed the same sentiment. He told DCFS that he did not know mother was his biological mother until he was eight years old. During an interview in December 2014, Angel stated: "I don't want to do therapy. Just want to stay in this home because I am tired and I do not want to go back to her (mom). I do not want to visit because sometimes she does not show up and I am tired." Angel said he "would like for my parents, (Nina (Sophia) and Tio (Uncle Sam) to adopt me." When asked if he had any concerns about returning to mother's care, Angel stated: "Yes, I am tired and concerned that if I am returned to her that she would do drugs and lose us again." He added: "I like my current home. They give us clothes, food, education and a good environment."

When Angel lived with mother, he had "one pair of shoes and a little bit of clothes. Here we get to go to the dentist, eye doctor, and regular doctor."

In its November 2014 report, DCFS had recommended that mother be offered additional reunification services. However, in the interim report of January 26, 2015, DCFS changed its recommendation, and recommended that reunification services be terminated and the matter be set for a section 366.26 permanency plan hearing.

Twelve-month permanency hearing

The contested 12-month hearing (§ 366.21, subd. (f)) was held January 26, 2015.[4] I. testified that she wrote the January 23, 2015 letter because she didn't want to have anything to do with mother. She also testified that her caregivers had never tried to discourage her from visiting with mother. Angel testified that he did not want to return to mother's care "because she might go back to drugs." He had not visited with mother since last year. He also testified that his caretakers had not tried to discourage him from visiting with mother.

Mother testified that she wanted to get her children back "[t]oday, if I can." Mother said that she called the children "every day after 6 o'clock," but sometimes they did not pick up the phone, or they refused to talk with her. Mother also testified that she also had problems with visitation "since it started"—for example, "getting them to where we're at or finding a place where we're going to have a visit." Mother believed that the children's caregiver, Sophia L., was interfering with visitation.

Mother testified that she was at an inpatient drug treatment program that she hoped to complete in March 2015. Eva lived at the program with her. Mother also completed a parenting class at Tarzana, the program she was enrolled in previously. Mother said there were unresolved issues between her and the children, and some progress could be made if the court ordered therapy between herself, Angel and I.

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[4] Section 366.21, subdivision (f), provides that "[t]he permanency hearing shall be held no later than 12 months after the date the child entered foster care." In this case, DCFS detained the children on September 20, 2013. Because the hearing had been continued for various reasons, it was held 16 months after the children were detained.

Sophia L. testified that she had never said anything to discourage the children from visiting with mother.

At the conclusion of testimony, counsel for DCFS argued in favor of terminating mother's reunification services, based on the lack of consistent visitation and mother's having failed to make significant progress in resolving the problems that led to the children's removal. The children's counsel agreed that reunification services should be terminated, arguing there would be a substantial risk of detriment to the children if they were returned to mother. Counsel cited mother's drug abuse history, argued that the children had suffered because of it, and stressed that the children did not want to return to mother.

Mother's counsel disputed the claim of DCFS and the children's counsel that mother had not consistently visited the children. Counsel stated that mother "has had visits" even though the children had been "adamant in indicating they don't want contact with mother." Counsel also argued that mother had made significant progress in resolving the issues that led to the children's removal, and could be finished with her current program in "about a month." Mother's counsel requested that if the court were not inclined to return the children to mother that day, that the court order additional reunification services, because "there is a substantial probability that the children will be returned to mother by the 18-month date." Counsel acknowledged that the 18-month date was "just a couple of months or a few months from now."

At the conclusion of the hearing, the court first stated that it had to consider the best interests of the children, not (as mother's counsel had suggested) the best interests of the mother "and what she desires to have occur." The court noted that it could only order further reunification services if it was able to find there was a substantial probability the children would be returned to mother by the 18-month date, which is "just a couple of months or a few months from now." The court said that based on the evidence before it, it could not make such a finding.

After admitting into evidence all the reports submitted by DCFS, the court then found continued jurisdiction was necessary because "conditions continue to exist which

justified the court taking jurisdiction pursuant to [section 300]." The court further found, by a preponderance of the evidence, that return of the children to mother's physical custody would create a substantial risk of detriment to the children's "safety, protection, or physical or emotional well-being." The court found, by clear and convincing evidence, that mother had not made satisfactory progress toward alleviating the causes that necessitated the children's placement. It also found, by clear and convincing evidence, that DCFS had complied with the case plan in "making reasonable efforts to return the children to a safe home and to complete any steps necessary to finalize the permanent placement of the children."

The court ordered that the children remain dependents of the court and that the suitable placement order remain in effect. The court found that there was not a substantial probability that the children would be returned to mother by the 18-month date, and further found that mother had not consistently and regularly visited the children, had not made significant progress in resolving the problems that led to the children's removal, and had not demonstrated the capacity or ability to complete the objectives of the treatment and to provide for the children's safety, protection and physical and emotional health.

The court set the matter for a permanency planning hearing on May 22, 2015. Mother filed a timely notice of intent to file writ petition.

DISCUSSION

I. Legal principles and standard of review

Section 361.5, subdivision (a)(1)(A), provides that where a dependent child of the juvenile court is three years of age or older, and absent circumstances not present here, "court-ordered services shall be provided beginning with the dispositional hearing and ending 12 months after the date the child entered foster care . . . ." At the 12-month status review hearing, the court must return the child to the parent's custody unless it finds that doing so would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. (§ 366.21, subd. (f).)

If the court does not return the child to the parent at the 12-month hearing, the court may continue the case for up to six months for a permanency planning hearing, provided that the hearing occurs within 18 months after the date the child entered foster care. However, the court may do so "only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended time period, or that reasonable services have not been provided to the parent or guardian." (§ 361.5, subd. (a)(3).)

"[I]n order to find a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian 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 or legal guardian has consistently and regularly contacted and visited with the child[;] [¶] (B) That the parent or legal guardian has made significant progress in resolving problems that led to the child's removal from the home[; and] (C) The parent or legal guardian 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)(A)-(C).)

Here, the court found that it was not able to make any of these required findings, and therefore it terminated mother's reunification services. We find that substantial evidence supports the court's order. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1020).

II. Section 366.21

A. Mother did not "consistently and regularly" visit with the children

Mother first contends the court erred when it found that she had not consistently "contacted and visited" the children. We disagree. Although the record demonstrates that early in the reunification period there were times when mother visited the children regularly (often in conjunction with her visits with Freddie), beginning in the spring of 2014, I. refused to visit, or even talk with, mother, and Angel followed suit soon after. From the beginning of the reunification period I. did not want any contact with mother

whatsoever, though Angel was still willing to visit with mother at the time of the six-month status review hearing. However, when mother failed to show up for several visits, Angel also said he no longer wished to visit with or speak with her. By the time of the 12-month hearing, both children had refused contact with mother altogether; I. had not visited with mother in 10 months and Angel had not visited with her in four months. Although mother attributes the children's attitudes toward her to intervention by their caregiver Sophia L., the children denied that Sophia L. had tried to influence them in any way, other than to encourage them to visit with mother or speak with her on the phone. It was mother's own behavior that precipitated her estrangement from the children.

B. Mother did not make significant progress in resolving problems that led to the child's removal

The children were removed from mother's custody because she had left them without proper care. At the time the children were detained, mother was in a residential drug treatment program following the detention of Freddie and L. I. was already living with Sophia L. and Angel was living with the maternal grandmother, who was supposed to file for legal guardianship. However, the grandmother abandoned the home, and the maternal grandfather was unable to care for Angel. Sophia L. took both children into her home, where they remain.

Mother's lengthy history of substance abuse spans almost half her life. Although there were periods when mother was (in her words) "clean," her struggles with substance abuse resulted in all five of her children becoming dependents of the juvenile court. Mother admits she "had difficulty remaining in a substance abuse program at the beginning of this case," but points to her success in her most recent program. However, mother did not even enter that program until a year after Angel and I. were detained. Prior to that time, mother failed to complete three other substance abuse programs, either because she broke the rules, had positive drug tests, or simply stopped attending. While mother's most recent efforts are commendable, her four-month stay in a highly structured inpatient environment does not, in our view, constitute "significant progress" when viewed in light of mother's lengthy substance abuse history.

C. Mother has not demonstrated the capacity and ability both to complete the objectives of her treatment plan and to provide for the children's safety, protection, physical and emotional well-being, and special needs

Even if mother actually completes the JWCH program, there is no evidence in the record to suggest she has the capacity or ability to provide a stable home for the children when she is released. The record reveals that mother never occupied a parental role toward Angel or I. Angel did not even know mother was his natural mother until he was eight years old; I. said she was raised by Sophia L. and Sophia's mother. Both children had been diagnosed with depression, and Angel had a special need requiring speech therapy and special classes at school. Two of mother's other children, Freddie and L., were not returned to her care, and Eva remains a dependent child of the court. Mother has not expressed even vague plans for providing a stable home for the children, let alone addressing their special needs.

III. Reunification services

During the reunification period, DCFS provided mother with an array of services, including visitation monitors, transportation assistance, and, most importantly, referrals to several substance abuse programs. However, mother contends that these reunification services were not adequate because they did not include conjoint counseling.

DCFS was aware of the difficulties in the children's relationship with mother. DCFS addressed these problems on behalf of the children by arranging for them to have weekly individual therapy. Although mother did express to DCFS her difficulties in visiting with her children, she attributed these difficulties to the children's caregiver and others. Mother suggests DCFS should have forced the children to participate in conjoint counseling, and should have explained to I. that refusal was not an option. It is clear from the record, however, that conjoint counseling would have been of little benefit in view of the fact that the children had no desire even to speak with mother, let alone participate in counseling with her. In fact, both children were so adamantly against any contact with mother that they defied the court's visitation order.

The standard for evaluating the reasonableness of the agency's reunification services 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.* (1991) 2 Cal.App.4th 538, 547.) In this case, forcing the children to undergo unwanted conjoint counseling with mother would have been counterproductive. Under the circumstances, the juvenile court correctly found that the reunification services DCFS provided were reasonable.

IV. Substantial evidence supports the juvenile court's order denying mother's request to return the children to her at the 12-month hearing

Mother cites section 366.21, subdivision (f), which provides that the juvenile court must return dependent children to their parent's care at the 12-month hearing, unless it finds, by a preponderance of the evidence, that there is a substantial risk of harm to the children by doing so. Mother focuses on the word "substantial," apparently conceding that while the children might be at some risk if they were returned to her, the risk was not substantial because mother was doing well in her current residential drug treatment program.

Mother also concedes the children did not want any contact with her, but argues that the children's wishes should be discounted because "[a] child's wish not to go home is not synonymous with detriment." Mother cites small, selected portions of the record to support her claim that the children would not suffer harm if they were returned to her. For example, mother cites I.'s testimony to the effect that she believed mother was "getting better." The fact that the children may wish mother well does not mean they want to be forced to live with her. In fact, there is abundant evidence in the record to suggest that they would suffer not only detriment, but *substantial* detriment, if forced to do so. That evidence is that while mother was focused on herself and pursued her various drug treatment programs, others raised her children. The children have made great strides while living in the stable home of two loving relatives who want to adopt them, and in whose home they wish to stay. Mother has offered no plan for the children, let alone one that would involve a stable home.

DISPOSITION

The petition for extraordinary writ is denied. This opinion shall become final immediately upon filing. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST